2022 IL App (4th) 220675-U

NO. 4-22-0675

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
December 30, 2022
Carla Bender
4th District Appellate
Court, IL

In re L.S. and C.S., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	McLean County
Petitioner-Appellee,	)	No. 18JA76
v.	)	
Lester S.,	)	Honorable
Respondent-Appellant).	)	J. Brian Goldrick,
	)	Judge Presiding.

JUSTICE DOHERTY delivered the judgment of the court.
Presiding Justice Knecht and Justice Steigmann concurred in the judgment.

ORDER

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

¶ 2 In September 2019, the State filed a motion for the termination of parental rights of respondent Lester S. and his wife Crystal S. as to their minor children L.S. (born in 2014) and C.S. (born in 2017). The McLean County circuit court held a fitness hearing in January 2020 and, pursuant to the agreement and admission of the parents that they "failed to make reasonable progress" during a nine-month period following the adjudication of neglected minors, found both parents unfit by clear and convincing evidence. After the July 2022 best interest hearing, the court found it was in the minor children's best interest to terminate the parental rights of respondent and his wife. The Department of Children and Family Services (DCFS) then placed the minor children with respondent's sister, Leslie S.

¶ 3 Respondent appeals, asserting the trial court's best interest determination and termination of his parental rights were against the manifest weight of the evidence.

¶ 4 We affirm.

¶ 5 I. BACKGROUND

¶ 6 The minor children's mother, Crystal S., is not a party to this appeal and has filed a separate appeal in Fourth District case No. 4-22-0757.

¶ 7 A. Adjudication of Wardship

¶ 8 In late July 2018, respondent's wife Crystal S. was taken to the hospital for leg pain; while there, she tested positive for opiates, cocaine, and marijuana. It was also reported that respondent abused cocaine. Because of the parents' "history of substance abuse, current use, and history of DCFS involvement due to substance abuse concerns," their children were removed from their care and placed in protective care.

¶ 9 On August 2, the State filed a petition for adjudication of wardship regarding L.S. and C.S. (and a third child not part of this appeal), which asserted, among other things, that the minors were "living in an environment injurious to their welfare" in the care of their parents because each parent "has unresolved issues of alcohol and/or substance abuse" that created "a risk of harm to the minors."

¶ 10 At the shelter care hearing held the following day, the court determined that probable cause existed for the filing of the petition for adjudication of wardship and found that both parents had "long standing substance abuse issues," and "[d]espite treatment episode(s), their addictive behaviors continue." The court concluded that there was "immediate and urgent necessity to remove the minor(s) from the home" and that "leaving the minor(s) in the home [was] contrary to the health, welfare and safety of the minor(s)." Finally, the court held that "reasonable

efforts have been made to keep the minor(s) in the home but they have *not* eliminated the necessity for removal." (Emphasis in original.) The court appointed DCFS as temporary custodian of the minor children and admonished the parents regarding the obligation to cooperate with DCFS.

¶ 11 Following a pretrial hearing in mid-September 2018 at which each parent admitted the relevant paragraphs of the petition for adjudication of wardship, the court adjudicated the minors to be neglected. At the dispositional hearing in late October, the court found both parents unfit and held that it was in the best interest of the minor children "that they be made Wards of the Court." The court found that respondent had "not screened as required" and that his September and October drug screenings were positive. "He needs to complete parenting classes. He will need appropriate housing and employment. He will need to demonstrate the ability to maintain a clean and sober lifestyle and to cooperate with agency directives." The court set the permanency goal as return home within 12 months.

¶ 12 B. Termination of Parental Rights

¶ 13 In September 2019, the State filed a petition to terminate parental rights, asserting that each parent had "failed to make reasonable progress toward return of the children to the parent within any 9-month period following the adjudication of neglected minor" under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act). 750 ILCS 50/1(D)(m)(i), (m)(ii) (West 2018). Thereafter, numerous permanency hearings were held at which the court, after reviewing the submitted permanency reports, concluded that (1) the parents remained unfit and (2) it was in the children's best interest to remain wards of the court.

¶ 14 In December 2019, the court changed the permanency goal to substitute care pending a determination on the petition to terminate parental rights.

¶ 15 1. *Fitness Hearing*

¶ 16 At the hearing on the petition to terminate parental rights, both parents admitted they "failed to make reasonable progress toward return of the children to the parent within any nine-month period following the adjudication of neglected minor[s]." After questioning each parent on their admissions in the presence of their respective counsel, the court found the parents were unfit and set the matter for further hearings.

¶ 17 Following several continuances due to COVID-19 protocol, a hearing on the petition to terminate parental rights was held in July 2020. The parties presented a "Final and Irrevocable Consent to Adoption by a Specified Person or Persons" (surrender of parental rights) relating to L.S. and C.S., which consented to the adoption by Leslie S. Paragraph 7 of the surrender forms stated that the signatory understood "that by signing this consent I irrevocably and permanently give up all my parental rights I have to my child[ren]." The court accepted the "surrenders," "finding them to be knowingly and voluntarily made." An order terminating parental rights was entered on July 29 specifically finding that both parents had "voluntarily and irrevocably consented in open court" to the adoption of the two minors, L.S. and C.S. At that time the permanency goal was changed to adoption.

¶ 18 Numerous permanency hearings were held throughout the remainder of 2020, throughout 2021, and into early 2022, and at the conclusion of each hearing the court found that the parents remained unfit and that it continued to be in the best interest of the minor children to remain wards of the court.

¶ 19 At the January 2022 permanency status hearing, the court received and reviewed a DCFS progress report stating that, "While both parents remained involved with parent-child visitations and completed a substance abuse assessment [in December], neither were cooperating

with random drug screens." Neither parent had undertaken a drug screening since late May 2021, and both had tested positive on their May 4, 2021, screenings.

¶ 20 2. *The Children's Placement*

¶ 21 The two minor children have been the subject of several placements throughout the four years of this proceeding. The minors were initially placed with fictive kin in August 2018. In March 2019, they were moved to the home of Leslie S., a relative. In December 2020, the children were removed from Leslie S.'s home because she had allowed respondent to be alone with the minor children; they were then placed in a traditional foster arrangement with Veneice P. According to the circuit court, this removal voided the parents' previously accepted "surrender."

¶ 22 At some point in 2021, the minor L.S. had difficulties in foster care and was separated from his brother and placed in two different foster care homes. The two were reunited in foster care in late January 2022 with John M., where they remained until the parental rights determination.

¶ 23 3. *Best Interest/Parental Rights Termination Hearings*

¶ 24 An evidentiary hearing was held in May 2022 concerning the best interest and termination issues. At this point, the third minor had been released from wardship due to his placement with guardians. The court accepted DCFS's May 2022 best interest report and various administrative reports into evidence and took judicial notice of the court file, all without objection. The DCFS best interest report discussed each of the 10 statutory factors and assessed placement but could not offer a final opinion on placement because Leslie, with whom placement of the minors was being considered, had not yet completed her required parenting programs. The report, however, noted that the parents had "expressed that they want the children to return to their care, or the care of Leslie S."

¶ 25 At the May hearing, Crystal S. testified that she believed her children would be best served if placed with Leslie S.; she believed the children felt safe with Leslie S. and felt their home was with her. Crystal S. was asked, "Is it your goal to have your children ultimately with Leslie S.?", to which she answered, "Yes." When asked to explain her answer, Crystal S. stated, "She loves them. I trust her. She'll know where they're at and keep them safe at all times. They'll be with family." Respondent did not testify. At the conclusion of the hearing, the court took the matter under advisement pending a final report and placement decision from DCFS.

¶ 26 On July 12, DCFS filed its supplemental status report regarding the placement decision for L.S. and C.S. According to the report, a decision had been made "that the boys will be placed back with their paternal aunt, Leslie [S.]" and that "the agency views [Leslie S.] as a relative to the children, and even if the court choses to terminate parental rights prior to a placement with her, the agency will still view her as a relative placement for the children." Elizabeth McCormick, a child welfare supervisor with The Baby Fold, elaborated on the DCFS status report during the July 19 hearing, stating that the children's current foster parent had been given notice that as of August 1, the children were to be placed with Leslie S.

¶ 27 Counsel for the minors' mother represented that "we have no objection to this placement in the event the Court decides to terminate." Counsel for respondent requested a continuance until after the placement occurred and the situation "was more stable." The court denied the request for a continuance.

¶ 28 4. *Court Rulings on Termination of Parental Rights*

¶ 29 At the conclusion of the July hearing, the trial court assessed the statutory best interest factors, remarking on each in reference to the two minors. Following its discussion of these

factors, the court reiterated its understanding that the parents "would like to have the children placed back with them, if not with them *** with [Leslie S.]," and stated:

> "[W]ith respect to the need for permanence I think that's the strongest factor given the age of the children and the age of this case. I think that supports termination of parental rights. Again permanency needs to be found. These children need to know that they're going to remain in a placement and that that's going to be their long-term placement, the place that they can call home."

¶ 30 The court stated the "children are going to remain wards of the court. DCFS is going to continue as the guardian, and the permanency goal will be set at one of adoption." The court's written order concluded, "the State has proven by a preponderance of the evidence that it is in the best interests of the minors [C.S.] and [L.S.] to terminate the parental rights" of respondent and Crystal S.

¶ 31 This appeal followed.

¶ 32 II. ANALYSIS

¶ 33 Because he stipulated to his lack of fitness, respondent is not challenging the trial court's fitness determination. Instead, he contests only the court's best interest determination to terminate his parental rights and argues that the court "placed too much weight on permanence for his children." He further contends the court should have placed "more weight on a potential relationship with their biological father."

¶ 34 A. Termination of Parental Rights

¶ 35 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2020)), 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 2020)). *In re Donald A.G.*, 221 Ill. 2d 234, 244 (2006). If the 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 (2004). In this appeal, we focus solely on the second step: the best interest determination.

¶ 36 In evaluating a child's best interest, the applicable statute provides that the trial court shall consider the following factors 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;
>
> (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 2020).

¶ 37 Additionally, a trial court "may consider the nature and length of the child's relationship with his present caretaker and the effect that a change in placement would have upon his emotional and psychological well-being." See *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004) (citing *In re J.L.*, 308 Ill. App. 3d 859, 865 (1999)).

¶ 38 As is evident from the statutory language, the focus of the best interest analysis is not on the parent's desire or efforts to establish and maintain a parental relationship. Rather, it is on the child's best interest. Indeed, as was held in *In re Custody of H.J.*, 2021 IL App (4th) 200401, ¶ 27, "the children's best interests trump even the parents' rights or interests in their children." (Citing *In re Violetta B.*, 210 Ill. App. 3d 521, 533 (1991) (stating " 'the parents' right to the custody of their child shall not prevail when the court determines that it is contrary to the best interests of the child' ")). " 'A child's best interest is not part of an equation. It is not to be balanced against any other interest. In custody cases, a child's best interest is and must remain inviolate and impregnable from all other factors, including the interests of the biological parents.' " *Id* ¶ 27 (quoting *In re M.C.*, 2018 IL App (4th) 180144, ¶ 30, quoting *In re Ashley K.*, 212 Ill. App. 3d 849, 879 (1991)).

¶ 39 B. Standard of Review

¶ 40 Accordingly, "[a] trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence." *In re Shru. R.*, 2014 IL App (4th) 140275, ¶ 24. "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." (Internal quotation marks omitted.) *In re J.H.*, 2020 IL App (4th) 200150, ¶ 68.

¶ 41 C. The Termination of Parental Rights Decision

¶ 42 Here, the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence. As discussed earlier, the court assessed each of the statutory factors set forth in section 1-3(4.05)(a-j) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2020)) and afterwards concluded:

> "So considering the evidence and testimony and the factors in this case the Court is finding it's in the best interest of the minors that the parental rights of [respondent and Crystal S.] be terminated. I think the State has established that by more than a preponderance of the evidence."

¶ 43 In short, the court concluded that termination would permit placement of the children with Leslie S., who offered the most suitable solution. According to the court, placement with Leslie S. "is a very familiar placement for the children" that provided "continuity of affection" and "a place that they can call home." It also concluded that placement with Leslie S. was "the strongest attachment at this point in time" for the children. Finally, the trial court found that Leslie S. had "certainly helped *** the children to develop their identity [of] who they are. That's a familial placement. I'm confident that she'll support the children understanding their familiar, cultural, and their religious backgrounds."

¶ 44 Although the trial court acknowledged that respondent "would like to have the children back" with him, and if not with them, with Leslie S., it emphasized the need for permanence in the minors' lives. According to the court:

> "[W]ith respect to the need for permanence I think that's the strongest factor given the age of the children and the age of this case. I think that supports termination of parental rights. Again permanency needs to be found. These children need to know that they're going to remain in a placement and that that's going to be their long-term placement, the place that they can call home."

¶ 45 The law is clear that the existence of a father-child bond "does not automatically insure that *** the child's best interests will be served by that parent." *In re J.B.*, 198 Ill. App. 3d 495, 499 (1990). Other factors—such as "the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures" (705 ILCS 405/1-3(4.05)(g) (West 2020))—may properly be considered. Here, the court determined that the children's need for permanence outweighed the time it may take the father to reach his goals and otherwise correct the conditions which led to the children's removal. *In re Janira T.*, 368 Ill. App. 3d 883, 894 (2006). Considering that this case has proceeded in the courts for over four years—in many instances due to COVID-related continuances, but also due to the parents' inability to achieve their goals—and that the minor children have been placed in numerous foster care settings, the trial court's findings are supported by the record.

¶ 46 Additionally, we note that an argument similar to respondent's—that he be given more time to establish a relationship with his children—was made to this court in *In re M.H.*, 2015 IL App (4th) 150397, ¶¶ 32-33. There, the appellant argued, "Although the foster family was willing to provide permanency for [the minor child], [he] should be given a chance to establish a

bond with [the child] before it can be determined that her best interests require the termination of his parental rights." *Id.* ¶ 32. In declining to adopt the appellant's position, this court stated:

> "We respect respondent's resolve to be a good father. We do not doubt he cares about M.H. We do not doubt the sincerity of his desire to establish a relationship with her. Nevertheless, the foster parent already has established a relationship with M.H., and whereas respondent is, in a manner of speaking, an unknown quantity as a parent, the foster parent is a known quantity." *Id*. ¶ 33.

¶ 47 We decline to follow respondent's suggestion and find the words of *M.H.* equally applicable here.

¶ 48 In its most basic sense, respondent is simply asking this court to reweigh the evidence, something which we cannot do under a manifest weight of the evidence analysis. It is the province of the trier of fact to weigh the evidence, resolve conflicts in testimony, and assess the credibility of the witnesses. *People v. Evans*, 209 Ill. 2d 194, 209-10 (2004). As this court has long held, "A reviewing court is not in a position to reweigh the evidence, but can merely determine if the decision is against the manifest weight of the evidence." *Tate v. Illinois Pollution Control Board*, 188 Ill. App. 3d 994, 1022 (1989) (citing *Jackson v. Board of Review of the Department of Labor*, 105 Ill. 2d 501, 506 (1985)); see also *McKey & Poague, Inc. v. Stackler*, 63 Ill. App. 3d 142, 151 (1978). Further, in matters involving minors, the trial court "receives broad discretion and great deference." *In re D.D.*, 2022 IL App (4th) 220257, ¶ 28 (citing *In re E.S.*, 324 Ill. App. 3d 661, 667 (2001)).

¶ 49 For the reasons stated above, we conclude the trial court's decision that it was in the best interest of the minor children to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 50 III. CONCLUSION

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

¶ 52 Affirmed.