2015 IL App (4th) 150720-U

NO. 4-15-0720

FILED
December 3, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: the Adoption of R.E.S., a Minor,	)	Appeal from
ROY LEE SMALL and DEBORAH SUE SMALL,	)	Circuit Court of
Petitioners-Appellees,	)	Macon County
v.	)	No. 13AD42
ROBERT A. ARKEBAUER,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Presiding Justice Knecht and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's decision terminating respondent's parental rights is affirmed.

¶ 2 On September 8, 2014, petitioners filed a second amended petition for adoption, seeking to adopt their granddaughter, R.E.S., who was born on August 11, 2011. On February 4, 2015, the trial court found respondent, Robert A. Arkebauer, unfit. On July 22, 2015, the court held a best-interest hearing and found it in R.E.S.'s best interest to terminate respondent's parental rights. A written order terminating respondent's parental rights was entered on August 3, 2015. Respondent appeals.

¶ 3 I. BACKGROUND

¶ 4 R.E.S. was three years old on September 8, 2014, when her maternal grandparents filed a second amended petition for adoption of R.E.S. Donja Small, the mother of R.E.S., lived close to her parents and was in agreement with their petition. (Donja has another daughter in her

custody who is unrelated to respondent.) Once the adoption was final, the grandparents planned to cooperate with Donja to have guardianship placed with her. R.E.S. would continue to live with Donja as she had since birth.

¶ 5 The second amended petition alleged respondent was the biological father of R.E.S. and was unfit for the following reasons: (1) he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first 30 days after its birth (750 ILCS 50/1(D)(l) (West 2014)); (2) he evidenced his intent to forgo his parental rights as manifested by his failure for a period of 12 months to visit the child (750 ILCS 50/1(D)(n)(1)(i) (West 2014)); (3) he evidenced his intent to forgo his parental rights as manifested by his failure for a period of 12 months to communicate with the child, although able to do so and not prevented from doing so by a court order (750 ILCS 50/1(D)(n)(1)(ii) (West 2014)); (4) he failed to commence legal proceedings to establish his paternity under the Illinois Parentage Act of 1984 within 30 days of being informed of the birth of the child (750 ILCS 50/1(D)(n)(2)(i) (West 2014)); (5) his repeated or continuous failure, although physically and financially able, to provide the child with any food, clothing, or shelter (750 ILCS 50/1(D)(o) (West 2014)); (6) he was guilty of desertion of the minor child for more than three months preceding the commencement of the adoption petition on September 5, 2013 (750 ILCS 50/1(D)(c) (West 2014)); and (7) he was guilty of habitual drunkenness for a period of at least one year immediately prior to the commencement of the unfitness proceeding (750 ILCS 50/1(D)(k) (West 2014)).

¶ 6 On January 13, 2015, the guardian *ad litem* (GAL) filed his report and recommendation. His report reflected the following. Donja and her father, Roy Small, wanted this adoption to "protect R.E.S. from [respondent]" and to provide R.E.S. with health care

benefits. The parties were open that R.E.S. would continue to live with Donja if the petition was granted. The GAL participated in Robert's deposition and related the following in his report. Robert never signed a voluntary acknowledgment of paternity for R.E.S., nor did he petition to have his parental rights established. In June 2012, Donja brought R.E.S. to prison to see respondent and shortly thereafter respondent removed Donja from the visitor's list. Respondent has had no contact with R.E.S. since June 17, 2012. Respondent has a long history of criminal activity in Christian County, including an alcohol-related accident resulting in the death of the mother of another of respondent's children. Respondent continued to consume alcohol in excess, admitting to drinking a minimum of once a week and consuming at least six or seven drinks at a time, including hard liquor.

¶ 7 The GAL reported petitioners were proper persons to adopt R.E.S., respondent was unfit, and it was in R.E.S.'s best interest to be adopted by her grandparents, with Donja acting as R.E.S.'s custodial guardian.

¶ 8 On February 4, 2015, the trial court held a fitness hearing. Petitioners filed genetic testing results, showing respondent was indeed the biological father of R.E.S.

¶ 9 Donja testified she notified respondent when she delivered R.E.S. He came to the hospital but declined to sign a voluntary acknowledgment of paternity. Respondent posted a picture of himself holding R.E.S. in the hospital on Facebook, announcing, "It's a girl."

¶ 10 Donja started associating with respondent in 2007 or 2008. At that time, he did not tell her he had criminal charges pending as a result of driving drunk and killing his wife as a result thereof. Donja was in court when he pleaded guilty and was placed on probation. His probation order contained a provision prohibiting the consumption of alcohol.

¶ 11 During his probation, Donja was a passenger on respondent's motorcycle. He had

stopped at several bars and consumed alcohol. While speeding on the Nokomis blacktop, respondent lost control of the motorcycle when a deer entered the roadway. Donja was thrown from the motorcycle, suffering broken bones, "road rash" over a large portion of her body, and a torn scalp. She heard the paramedics say, "the female's not going to make it. Let's see what we can do for the male." Donja suffered permanent injuries as a result of the crash. She had been a certified teacher, but she suffered permanent memory loss and was no longer able to teach.

¶ 12 Respondent was charged, in case No. 2009-DT-148, with driving under the influence of alcohol as a result of the crash on the Nokomis blacktop. He pleaded guilty on June 8, 2011, and was sentenced to prison in the case, for which he had been placed on probation. Donja brought R.E.S. to visit respondent in prison, but following the June 17, 2012, visit, respondent sent a letter telling her he had her removed from the visitor's list. Since that date, respondent never asked to visit with R.E.S., nor did he bring any action to establish paternity.

¶ 13 Donja testified, when respondent was offered the voluntary acknowledgment of paternity to sign, he stated he would not sign it because he would then be made to pay child support. Respondent never paid any money to Donja for R.E.S.'s support and never sent a birthday card or a gift for Christmas. According to Donja, respondent "never sent anything at anytime for any occasion."

¶ 14 On three or four occasions after R.E.S.'s birth, respondent came to Donja's home after midnight. They had sexual relations, but he never inquired about R.E.S. or asked to hold her. Donja could smell and taste alcohol on respondent.

¶ 15 Donja has lived in the same house for 10 years. Respondent had her cell phone number, but he never called or texted asking to visit R.E.S. He never offered financial assistance to help support R.E.S. When Donja ran out of savings, her parents started paying her bills.

¶ 16 Respondent testified, since being released from prison, he had employment building bridges. He earned $31 an hour. He made $23,000 in 2014 and was employed in 2013 also. He never paid support for R.E.S. Respondent admitted he continues to consume alcohol. Respondent claimed he obtained an alcohol evaluation after he was released from prison. Despite having been responsible for two alcohol-related crashes, one resulting in a death and one resulting in severe personal injury, respondent claimed the evaluation showed him to be a social drinker.

¶ 17 Respondent testified he drank alcohol while on probation, but he could not recall if his probation order prohibited that. When confronted with the two serious crashes, each involving alcohol, petitioners' counsel then asked, "But you hadn't [*sic*] stopped drinking, have you." Respondent stated, "No. Last I checked, it wasn't illegal."

¶ 18 Respondent, who was released from prison in November 2012, admitted he had not visited R.E.S. since he had been out of prison.

¶ 19 Under questioning by his lawyer, respondent stated he did not sign the voluntary acknowledgment of paternity papers because Donja told him "they'd be beating down my door" for child support and payment of the hospital bills. According to respondent, Donja told him the State would pay for the birth expenses if he did not sign the papers.

¶ 20 Respondent also testified, between R.E.S.'s birth (August 11, 2011) and the time he went to prison in March 2012, his mother dropped him off at Donja's house two to three times a week for 15 to 20 minutes to visit R.E.S. During his incarceration, between March and November 20, 2012, he saw R.E.S. once, "maybe twice." He had Donja removed from the visitor's list because she was telling him he had to eliminate all ties with certain people.

¶ 21 Donja obtained a no-contact order on January 15, 2013, for a period of one year.

Respondent agreed to the entry of that order, which did not provide for visitation. Respondent testified, before he left for prison, he provided Donja with a $600 gift card to Walmart to buy diapers "and stuff." Donja testified the $600 card was payment to her for cleaning respondent's house on several occasions and for work she performed with his goats.

¶ 22 Respondent's mother, Marcia Arkebauer, testified between the birth of R.E.S. in August 2011 and the time respondent went to prison in March 2012, she drove respondent to Donja's house two or three times a week after he fed his livestock at his mother's house to visit with R.E.S. They would usually arrive between 5:30 and 6:30 p.m. She also testified she bought birthday and Christmas gifts for R.E.S., but Donja would not allow her to give them to R.E.S., nor would she allow her to visit with R.E.S.

¶ 23 Terri McKitrick testified she was currently living with respondent and his daughter by his deceased wife. She characterized respondent as a very good father. The daughter was in third grade and was obtaining straight A's on her report card.

¶ 24 In rebuttal, Roy testified Donja obtained a job at the same factory where he was employed. Monday through Friday they drove together to Decatur to work, taking R.E.S. with them to day care near the factory. Donja and R.E.S. spent every evening at his house after work, having supper, returning to their own home two blocks away about 7 p.m. Roy never saw respondent or his mother during these times attempting to visit R.E.S.

¶ 25 In announcing its findings, the trial court stated, "to a great extent, Mr. Arkebauer's testimony is not credible." While finding some portions of Donja's testimony not credible, the court stated, "The issue today is not whether [Donja] is a good parent or bad parent. The sole issue *** is whether or not the [p]etitioners have proven by clear and convincing evidence that [respondent] is an unfit parent." The court found respondent "unfit for the reasons

set forth in paragraph 8 of the second amended petition for adoption."

¶ 26 The trial court held a best-interest hearing on July 22, 2015. Respondent did not attend the hearing, but his attorney was present.

¶ 27 Roy Small testified he was currently retired. He had retired from military service after 21 years; thereafter, he ran a business in Pana for 11 years, and then took a job at the factory in Decatur. He was drawing full Social Security benefits as well as military-retirement benefits. His income totaled about $3,300 per month. He was able to provide financial security for R.E.S. He also had medical insurance available as a result of his military service and R.E.S. would be placed on his health insurance if he was permitted to adopt her. R.E.S. has her own bed and room in Roy's house. Donja and her parents all live in Oconee, population 200. Donja's house is about two blocks away from Roy's house.

¶ 28 Roy testified he had a kidney removed when a small growth was discovered to be cancerous. After his six-month checkup he remained cancer-free. He related Donja had been involved in two serious accidents, the first with respondent. During the second accident, Roy was driving when a car pulled into his path. Donja's head slammed violently against the window. Due to her injuries, she can no longer work. She had been a trigonometry and science teacher. She suffers blackouts and is unable to drive. She has poor long-term and short-term memory. Donja has no health insurance except Medicaid. Roy testified if something happened to Donja, he would be very concerned about R.E.S.'s welfare if she had to live with respondent. Roy and his wife had been married 45 years and had a stable marriage.

¶ 29 Deborah Small, Roy's wife, testified she was employed by a construction company as a bookkeeper and had been so employed since 1991. Deborah stated she sees R.E.S. almost every day and has a very close relationship with her. Deborah did not believe it would be

in R.E.S.'s best interest to be in respondent's custody if something happened to Donja.

¶ 30 Donja testified R.E.S.'s adoption by her maternal grandparents would be in R.E.S.'s best interest. No evidence was presented on behalf of respondent.

¶ 31 Thereafter, the trial court stated it had reviewed the best-interest factors set forth in the statute (705 ILCS 405/1-3(4.05) (West 2014)). Primarily because R.E.S. needs stability and continuity of relationships, the court found it in her best interest to terminate respondent's parental rights and entered an order to that effect on August 3, 2015.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 Illinois Supreme Court Rule 307(a)(6) (eff. July 6, 2000) provides for an appeal as of right from an interlocutory order terminating parental rights. The order terminating respondent's parental rights was signed on August 3, 2015, and respondent's notice of appeal was filed on September 2, 2015. Thus, we have jurisdiction over this appeal.

¶ 35 A. Lack of Factual Findings by the Trial Court

¶ 36 Respondent first contends reversal is required because the trial court failed to make factual findings, citing *In re B'Yata I.*, 2013 IL App (2d) 130558, 999 N.E.2d 817. We agree with the Second District that termination proceedings involve important protected interests. As such, trial courts should delineate their findings of fact in support of a finding of unfitness, not only to facilitate appellate review, but to let the parties know the basis for a finding of unfitness and eliminate delay from the potential need for remand for findings of fact. *Id.* at ¶ 42, 999 N.E.2d 817.

¶ 37 Other than stating its credibility determination, the trial court here merely stated it found respondent unfit "for the reasons set forth in paragraph eight of the second amended

petition for adoption." There are seven grounds of unfitness set forth in paragraph eight. The court seemed to find respondent unfit on all grounds, at least in its oral pronouncement. The court's written order stated, "Petitioners have proven one (1) or more of the allegations set forth in paragraph 8." We are left to guess which of the seven grounds the court found proved.

¶ 38 Nevertheless, our review in this case is not hampered by the lack of factual findings. The evidence of unfitness was overwhelming and largely undisputed. Thus, reversal on the basis the trial court failed to make factual findings is not mandated. See *In re Richard H.*, 376 Ill. App. 3d 162, 166, 875 N.E.2d 1198, 1201 (2007).

¶ 39 B. The Fitness Determination

¶ 40 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). "A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make." *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 41 Paragraph 8(a) of the second amended petition alleged as follows: "(a) That [respondent] has failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of a newborn child during the first thirty (30) days of its birth." 750 ILCS 50/1(D)(l) (West 2014). Here, Donja, or someone on her behalf, notified respondent she had

delivered his baby. He went to the hospital following the birth and Donja took his picture with R.E.S. Respondent declined to sign the voluntary acknowledgment of paternity when presented with it. Further, other than the day of R.E.S.'s birth, respondent did not see her at any other time during the first 30 days, nor did he provide any support for her in that time frame. As recognized by the First District:

> "[T]he legislature, in enacting section 1(D)(l) has imposed quite an exacting burden upon natural parents in a position such as that of respondent. Nonetheless, that burden is unequivocal and requires that a parent *affirmatively show a commitment to his child within 30 days of birth* in order to ensure that proper provisions can be made for the child's permanent placement, if necessary, as soon after birth as is reasonably possible." (Emphasis added.) *In re Adoption of J.R.G.*, 247 Ill. App. 3d 104, 110, 617 N.E.2d 377, 381 (1993).

¶ 42 Respondent's single visit to the hospital on the day of R.E.S.'s birth does not demonstrate a reasonable degree of interest, concern, or responsibility for his child. Refusal to acknowledge paternity or to even request genetic testing establishes a total lack of concern or responsibility. In fact, at the time of the final order regarding termination, R.E.S. was almost four years old. Respondent had failed to support R.E.S. and failed to bring a proceeding to establish paternity. He had not even seen her since June 17, 2012. He never displayed a *reasonable* degree of interest, concern, or responsibility for R.E.S. Accordingly, the trial court's decision finding respondent unfit is not against the manifest weight of the evidence.

¶ 43 C. The Best-Interest Determination

¶ 44 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These 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)(a) to (j) (West 2014).

¶ 45 The trial court's finding 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 Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 46 Respondent did not attend the best-interest hearing and his argument on appeal is quite thin. Here, the child's mother and maternal grandparents are seeking to protect her from having respondent, an unfit parent, make a claim for custody should Donja become unable to care for R.E.S. Respondent is a stranger to R.E.S., and he continues to consume alcohol despite having killed his first wife and almost killing Donja by operating motor vehicles while drunk. He has failed to support R.E.S. for four years or provide her with health insurance. He entered into an agreed order to have no contact with R.E.S. for one year. He has never taken steps to assert his parental rights to R.E.S.

¶ 47 On the other hand, Roy and Deborah, the maternal grandparents of R.E.S., can offer stability, attachment, and love to R.E.S. should anything happen to Donja. Donja is disabled and unable to work as a result of an accident and she suffers blackouts. Roy and

Deborah live two blocks from R.E.S., they help support her financially, and they are willing to provide her with health insurance. Donja wants her parents to adopt R.E.S., and it is clearly in R.E.S.'s best interest for them to do so in order to provide her with stability, continuity of relationships with parent figures and siblings, and a stable home where R.E.S. has strong attachments and security.

¶ 48 III. CONCLUSION

¶ 49 We affirm the trial court's judgment terminating respondent's parental rights.

¶ 50 Affirmed.