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2020 IL App (3d) 200014-U

Order filed May 8, 2020

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

2020

In re A.D.) Appeal from the Circuit Court
) of the 10th Judicial Circuit
(The People of the State of Illinois,) Tazewell County, Illinois
)
Petitioner-Appellee,) Appeal No. 3-20-0014
)
v.) Circuit No. 17-JA-46
)
Jennifer K.,) Honorable
) Timothy J. Cusack,
Respondent-Appellant.) Judge, Presiding.

PRESIDING JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held:* Trial court's finding that it was in child's best interest to terminate mother's parental rights was not against the manifest weight of the evidence where mother continued to use cocaine and refused to seek treatment, and child was thriving with foster parents who were willing to adopt her and encouraged continued visitation between her and her biological siblings.

¶ 2 The trial court adjudicated A.D. a neglected minor and her mother, respondent Jennifer K., unfit. The State filed a petition to terminate respondent's parental rights, alleging that respondent was unfit because she failed to make reasonable progress toward the return of A.D. during the nine-month period of March to December 2018. Following a best interest hearing, the

trial court determined that it was in A.D.'s best interest to terminate respondent's parental rights. Respondent appeals the trial court's best interest determination. We affirm.

¶ 3 A.D. was born in August 2015. In March 2017, the State filed a petition alleging that A.D. was a neglected minor in that her environment was injurious to their welfare because (1) respondent had a history of cocaine use, failed to participate in drug treatment and continued to use cocaine; (2) A.D.'s father, Donald D., had a history of cocaine use and admitted to using cocaine with respondent while A.D. was in the home; (3) on or about June 1, 2016, Donald broke the windshield of respondent's vehicle; and (4) Donald had a history of mental illness, refused to regularly take medication for his depression and attempted suicide on July 26, 2016, by overdosing on his anti-depressant medication. In July 2017, the State filed an amended petition containing the same allegations of neglect.

¶ 4 In January 2018, the State filed a second amended petition. That petition contained the same allegations of neglect as the original petition and further alleged that (1) respondent had "positive drops for cocaine" in September 2016, January 2017, August 2017, and November 2017, and failed to appear for 47 drug drops from September 2016 to November 2017; and (2) after respondent tested positive for cocaine in November 2017, a safety plan was implemented requiring respondent to have six negative drug drops, after which respondent failed to appear for three drug drops.

¶ 5 In March 2018, the trial court entered an adjudicatory order finding A.D. neglected for the reasons set forth in the petition, namely respondent's continued cocaine use. The same day, the trial court entered a dispositional order finding respondent unfit because of "substance abuse." The court made A.D. a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

¶ 6 In January 2019, the State filed a petition to terminate parental rights. Count I alleged that respondent failed to make reasonable progress toward the return of A.D. within the nine-month period of March 9, 2018, to December 9, 2018. Respondent initially denied the allegations. She later amended her answer, stipulating that “the allegations could be proven to the applicable standard” but denying that “termination is in the minor’s best interest.”

¶ 7 A best interest hearing was held on December 5, 2019. At the hearing, Alex Barry testified that he has been A.D.’s caseworker since April 1, 2019. Since May 1, 2019, A.D. has resided with her father’s brother and wife, who are willing to adopt her. According to Barry, A.D. is doing well in her current foster home, where a 12-year-old biological child and another foster child also live. A.D. is four years old and attends a preschool program. She is happy in her foster home and appears to be thriving. The foster family shows A.D. love and affection, and A.D. shows love and affection to them. A.D. has integrated well into her foster family.

¶ 8 Barry had “no concerns” about A.D.’s foster home. He believes it provides everything A.D. needs and is the least disruptive placement for her. According to Barry, respondent has not completed drug treatment, has had several drops positive for cocaine, and her attendance at drug drops has been sporadic. Prior to Barry taking over A.D.’s case, respondent cancelled several visits with A.D. Since April 1, 2019, respondent has consistently visited A.D. monthly as scheduled. Barry has received no cards, letters or gifts from respondent for A.D.

¶ 9 According to reports, respondent’s visitation with A.D. has consistently gone well. Barry believes that A.D. benefits from having visitation with respondent. Barry has seen only positive interactions between respondent and A.D.

¶ 10 Respondent testified that in addition to A.D., she has two other children: a 15-year-old daughter and a 12-year-old son. Respondent’s older daughter lives with respondent’s mother, and

respondent's son lives with his father. Respondent's last four visits with A.D. have included her siblings.

¶ 11 Respondent resides with her boyfriend of 12 years, William C. They have an on-again, off-again relationship. At the time of the hearing, respondent was unemployed. She quit her job at a bar because she did not want to be around alcohol. She testified that when she starts drinking, she is more likely to use drugs. She recently cut back on her alcohol consumption. Respondent does not believe it is in A.D.'s best interest to terminate her parental rights because she believes A.D. will not see her siblings anymore if her rights are terminated. A.D. has a close relationship with her siblings. According to respondent, "They all love each other. They all have a blast when they're together."

¶ 12 Respondent introduced photographs to the court showing the siblings together in October. At that time, respondent and the children "went to a little farm park and picked out pumpkins and went back to [respondent's] mom's house to carve pumpkins." Respondent and Donald also purchased a bicycle together for A.D.'s fourth birthday in August.

¶ 13 Respondent is not receiving treatment for substance abuse. She quit going to meetings because she is "not comfortable in them." She believes her parental rights to A.D. should not be terminated because she "was a good mother to her."

¶ 14 William testified that he has known respondent for 13 years and has lived with her for the past 12 years. He described respondent's relationship with her children as "good." He said, "She plays with them. They eat well. Are always dressed well." Based on his observations of A.D. in October, she misses respondent "very much." According to William, respondent misses A.D. "every day." William admitted that respondent has an alcohol problem. He has never seen respondent use drugs. Respondent drank alcohol in front of her children at a cookout in the summer of 2018. Respondent drank one or two beers a few days before the best interest hearing.

¶ 15 Respondent's mother, Stephanie K., testified that A.D. and her siblings "are all close." They call each other when they have problems. She is concerned that that if respondent's parental rights are terminated, A.D.'s siblings "won't be able to see [her]." Stephanie believes it is good for A.D. to be around her siblings because they provide A.D. with a good foundation.

¶ 16 Allison D., A.D.'s foster mother, testified that A.D. "is doing very well." A.D. attends the childcare center where Allison works. She is progressing in learning and "has a lot of friends at her new school." Allison described A.D. as "pretty independent." A.D. had a difficult time bonding with her foster family in the beginning, but, according to Allison, "she's come a really long way." A.D. lives with Allison, her husband, his biological daughter and a male foster child. A.D. is bonded to everyone in the family.

¶ 17 When Allison first obtained custody of A.D., respondent often called Allison and asked for her to take A.D. to Stephanie's house. Respondent has not done that lately. The last time respondent asked to visit with A.D. outside of her monthly visitation was in August. She testified that she is not obstructing visitation between A.D. and her siblings. Allison has no problem with A.D. visiting her siblings, respondent or Stephanie. A.D. seems to enjoy her visits with respondent and her siblings.

¶ 18 Allison and her husband are willing to adopt A.D. A.D. calls Allison "mom" and her husband "dad." Allison told A.D. that she has "two mommies." Allison "absolutely" believes it is important for A.D. to have visitation with her siblings, and she encourages that.

¶ 19 At the conclusion of the hearing, the trial court ruled that it was in A.D.'s best interest to terminate respondent's parental rights. The court pointed out that the case had been ongoing for 32 months, well over half of A.D.'s life. The court stated that A.D. "needs permanence." The court believed, based on Allison's testimony, that A.D. would continue to have contact with her

biological parents and, more importantly, her siblings. The court explained that respondent could not provide A.D. with the stability she needs.

¶ 20 With respect to the relevant statutory factors, the court stated:

“[T]he best interest factors inure to [A.D.]’s placement with the foster family at this point in time, specifically her physical safety and welfare of her, including food, shelter, health and clothing, are being provided there.

The development of her identity. Her background ties, including familial, are certainly being taken care of at that residence. Her sense of attachments, where she feels loved. Her sense of security, familiarity, continuity of affection, and the least disruptive placement for her I find are all at the foster parents[’].

I believe that community ties *** will be provided through that placement. Again, permanence for the child is at that foster house. All other factors I believe also inure to the foster family’s house.”

¶ 21 ANALYSIS

¶ 22 Respondent argues that the trial court erred in finding that it was in A.D.’s best interest to terminate her parental rights.

¶ 23 After a trial court finds a parent unfit, it must consider the best interest of the child. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). The State must prove by a preponderance of the evidence that it is in the child's best interest to terminate parental rights. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When reviewing a trial court's best-interest determination, we apply the manifest weight of the evidence standard of review. *In re T.A.*, 359 Ill. App. 3d at 961. A trial court's decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the decision is unreasonable, arbitrary or not based on the evidence presented. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 24 During the best interest hearing, all considerations must yield to the child's interests to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364. When determining the best interest of a child for purposes of a termination petition, the court is required to consider a number of statutory factors “in the context of the child's age and developmental needs.” 705 ILCS 405/1-3(4.05) (West 2018). These factors include: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (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; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) the child's need for permanence, which includes the child's need for stability and continuity of relationships with parent figures, siblings and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2018).

¶ 25 Here, the evidence showed that at the time of best-interest hearing, A.D. had been out of respondent’s care for almost two years and had lived in a foster home with her paternal aunt and uncle for seven months. In her foster home, A.D. is “happy and thriving.” A.D.’s foster parents have provided A.D. with a safe, caring and nurturing home and are willing to adopt her.

¶ 26 On the other hand, the evidence shows that respondent cannot provide A.D. with the safety, stability and permanence she needs. The State filed its petition against respondent when A.D. was 18 months old, alleging that A.D. was neglected, in part, because of respondent’s cocaine use. Over the next two-and-a-half years, respondent continued to test positive for cocaine and refused to undergo substance abuse treatment. Because of her continued cocaine use, respondent has lost custody of all three of her biological children.

¶ 27 Although the evidence showed that A.D. has a strong bond with respondent and her siblings, that factor alone is not dispositive in a best-interest determination. See *In re K.H.*, 346 Ill. App. 3d 443, 463 (2004) (existence of mother-child bond does not automatically ensure that child's best interest will be served by that parent). Additionally, while A.D. had a hard time adjusting to her current foster home at first, she has since bonded with her foster parents and the children in their home. Additionally, A.D.'s foster mother testified that she understood the importance of A.D.'s relationship with her siblings and would encourage continued visitation between A.D. and her siblings.

¶ 28 Based on the evidence presented, the trial court's conclusion that it was in A.D.'s best interest to terminate respondent's parent rights was not against the manifest weight of the evidence.

¶ 29 The judgment of the circuit court of Tazewell County is affirmed.

¶ 30 Affirmed.