

NOTICE

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FILED
August 28, 2019
Carla Bender
4th District Appellate
Court, IL

2019 IL App (4th) 190208-U

No. 4-19-0208

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

<i>In re</i> S.S., a Minor)	Appeal from the
)	Circuit Court of
(The People of the State of Illinois,)	Sangamon County
Petitioner-Appellee,)	No. 17JA37
v.)	
Bennie S.,)	Honorable
Respondent-Appellant).)	Karen S. Tharp,
)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Steigmann and DeArmond concurred in the judgment.

ORDER

¶ 1 *Held:* The appellate court affirmed, concluding the trial court’s findings respondent was unfit and it was in the minor’s best interests to terminate respondent’s parental rights were not against the manifest weight of the evidence.

¶ 2 Respondent father, Bennie S., appeals from the trial court’s order terminating his parental rights to S.S. (born August 19, 2004). On appeal, respondent argues the court’s findings he was an unfit parent and it was in the minor’s best interests to terminate his parental rights were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In September 2018, the State filed a motion to terminate respondent’s parental rights to S.S, which it later supplemented. In its supplemental motion to terminate respondent’s

parental rights, the State alleged respondent was an unfit parent as he (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor within the nine-month period following the adjudication of neglected, namely June 7, 2017, to March 7, 2018 (*id.* § 1(D)(m)(i)); (3) failed to make reasonable progress toward the return of the minor to his custody within the nine-month period following the adjudication of neglected, namely June 7, 2017, to March 7, 2018 (*id.* § 1(D)(m)(ii)); (4) abandoned the minor (*id.* § 1(D)(a)); and (5) deserted the minor for more than three months prior to the filing of the motion to terminate parental rights (*id.* § 1(D)(c)). The State further alleged it was in the minor's best interests to terminate respondent's parental rights and appoint the Department of Children and Family Services (DCFS) as guardian with the power to consent to adoption.

¶ 5 In November 2018, the trial court commenced a fitness hearing. At the State's request and over no objection, the court took judicial notice of its June 7, 2017, order adjudicating the minor neglected. The State elicited testimony concerning respondent's fitness from the minor's caseworkers, Tieshah Hawkins and Lisa Brocco-Tabora.

¶ 6 Hawkins testified she served as the minor's caseworker from March 2017, when the minor came into DCFS care, to May 2018. During that time, Hawkins also served as the caseworker to the minor's siblings, T.S. (born August 13, 2005), Ti. F. (born April 12, 2007), Ta. F. (born November 19, 2008), Ani. K. (born July 18, 2013), Ant. K. (born December 23, 2014), and Av. K. (born January 5, 2016). The minor and her siblings came into DCFS care after their mother, Megan J., violated a safety plan by allowing her paramour, Antonio K., to be around the

children. The safety plan was in place due to allegations suggesting Antonio K. sexually abused “some” of the children.

¶ 7 During her involvement, Hawkins prepared a service plan for respondent. Hawkins could not recall the date the service plan was created or the exact dates the service plan covered. Respondent had a service plan with another agency involving two of his other children. Hawkins worked with the other agency to determine appropriate services for respondent. She did not recall if respondent cooperated with the other agency.

¶ 8 Hawkins testified the service plan recommended the following services for respondent: (1) cooperation, (2) visitation, (3) parenting, and (4) a mental-health assessment. Hawkins initially expressed uncertainty as to whether she gave respondent a copy of his service plan. Hawkins testified respondent would attend court proceedings and, “[i]f I would have given it to him, it would have been when I seen him at court.” Hawkins later clarified, “we did not get around to giving him his service plan.”

¶ 9 In February 2018, Hawkins spoke with respondent and “briefly” went over his services and then she and respondent scheduled a date to meet in person to go over the services “in detail.” Hawkins went to the address provided by respondent on the date they discussed but no one answered the door. She attempted to contact respondent by telephone with a number he previously provided but the number was disconnected. Hawkins testified respondent did not attempt to contact her after the February 2018 meeting fell through.

¶ 10 Hawkins attempted to contact respondent by telephone at least once a month. Hawkins testified she did not have regular contact with respondent.

¶ 11 Hawkins testified she made a referral to an agency for parenting services in

February or March 2018. The referral was eventually dropped due to the agency not hearing from respondent.

¶ 12 Hawkins did not schedule any visits between respondent and the minor. Hawkins was unaware of any interaction between respondent and the minor. Hawkins testified respondent had not requested visitation with the minor.

¶ 13 Throughout her involvement, Hawkins conducted several administrative case reviews. Respondent did not attend the reviews. Respondent never rated satisfactory. He made no progress on services.

¶ 14 Hawkins testified there was never a time where she was close to placing the minor in respondent's care.

¶ 15 Brocco-Tabora testified she became the caseworker for the minor and her siblings in July 2018. Prior to that time, a caseworker named Tiffany served as the caseworker for a period of two months. After becoming the minor's caseworker, Brocco-Tabora spoke with the prior caseworker and her supervisor about referrals for respondent and reviewed the case file. Brocco-Tabora testified any necessary referrals had been made prior to her involvement and she did not issue any referrals. Brocco-Tabora testified she did not recall seeing any referrals for respondent in the case file.

¶ 16 Brocco-Tabora testified she met with respondent at his apartment on a monthly basis. She did not go over the service plan with respondent but did discuss services with him. At no point during the monthly meetings did respondent request visitation with the minor. Brocco-Tabora did not schedule any visits with the minor. During an October 2018 meeting, Brocco-Tabora testified respondent became "very angry and kind of aggressive" and "went off" after she

attempted to discuss parenting services with him. Brocco-Tabora testified respondent “said for me to get the F out” because “nobody was going to tell him how to parent his kids.”

¶ 17 In September 2018, Brocco-Tabora held an administrative case review. Respondent rated unsatisfactory as he had not engaged in services.

¶ 18 Brocco-Tabora testified at no point during her involvement was she close to placing the minor in respondent’s care.

¶ 19 Following this evidence, respondent moved for a directed finding. The court recessed before hearing argument on respondent’s motion.

¶ 20 In January 2019, the trial court continued the fitness hearing. Following arguments, the court denied respondent’s motion for a directed finding. At respondent’s request and over no objection, the court took judicial notice of respondent’s prior court appearances. Respondent did not present any other evidence. Following arguments, the court found respondent unfit for failing to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor’s welfare; (2) make reasonable efforts to correct the conditions that were the basis for the removal of the minor within the nine-month period following the adjudication of neglected; and (3) make reasonable progress toward the return of the minor to his custody within the nine-month period following the adjudication of neglected. In reaching its decision, the court highlighted respondent’s failure to (1) request visitation, (2) maintain contact with the minor’s caseworkers, and (3) visit with the minor. The court entered a written order providing the same.

¶ 21 After finding respondent unfit, the trial court commenced a best-interest hearing. The State again presented testimony from Brocco-Tabora.

¶ 22 The minor and her sister, Ti. F., had been living with Danielle Williams, a

traditional foster placement. The minor was developmentally delayed and struggled with speech and cognitive processing. Brocco-Tabora was in process of seeking a psychological assessment for further diagnosis. The minor had an Individualized Education Program, was placed in a self-contained life-skills classroom, and was receiving speech therapy. The minor had made progress in her placement but began to struggle with hygiene issues. Days before the hearing, Williams indicated she was unable to continue to care for the minor due to her hygiene issues. Brocco-Tabora was in the process of looking for another adoptive placement for the minor and had been speaking with a friend of Williams who knew the minor and had been around the minor and Ti. F. The minor's current and possible future placements were in the same apartment complex where respondent resided.

¶ 23 Brocco-Tabora testified she never heard the minor talk about having a father or make any comments suggesting she was aware respondent was her biological father. Brocco-Tabora was not aware of any interactions between respondent and the minor. Brocco-Tabora acknowledged she never specifically asked the minor if she had seen or spoken with respondent or if she had any relationship with him. Given the absence of any observed interactions or comments by the minor about respondent, Brocco-Tabora believed no bond existed.

¶ 24 Brocco-Tabora opined it would be in the minor's best interests to terminate respondent's parental rights. Following Brocco-Tabora's testimony, the trial court recessed.

¶ 25 In March 2019, the trial court continued the best-interest hearing. The court requested an update concerning the minor's placement. The State, over no objection, informed the court it spoke with the minor's caseworker who indicated the minor and Ti. F. had been placed with a "fictive aunt." The State also indicated an 18-year-old "cousin" lived in that home

and helped with the minor and Ti. F. The State asserted it was its “understanding that that placement has indicated to the agency that they love the girls, they want the girls there and they will be—they would like to be considered as an adoptive placement.” Based on the evidence presented, the court, after considering the statutory best-interest factors found in section 1-3(4.05) of the Juvenile Court Act of 1987 (705 ILCS 405/1-3(4.05) (West 2016)), found it would be in the minor’s best interests to terminate respondent’s parental rights. The court entered a written order terminating respondent’s parental rights.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 On appeal, respondent argues the trial court’s findings he was an unfit parent and it was in the minor’s best interests to terminate his parental rights were against the manifest weight of the evidence.

¶ 29 A. Unfitness Finding

¶ 30 Respondent asserts the trial court’s finding he was an unfit parent was against the manifest weight of the evidence.

¶ 31 In a proceeding to terminate a respondent’s parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177-78 (2006). A trial court’s finding of parental unfitness will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re N.T.*, 2015 IL App (1st) 142391, ¶ 27, 31 N.E.3d 254. “A court’s decision regarding a parent’s fitness is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent.” (Internal quotation marks omitted.) *In re M.I.*, 2016 IL 120232, ¶ 21, 77 N.E.3d 69.

¶ 32 In this case, the trial court found respondent to be an unfit parent in part because he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2016)). See *In re M.I.*, 2016 IL 120232, ¶ 43 ("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." (Internal quotation marks omitted.)). "[I]n determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, we have to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990).

¶ 33 Respondent asserts the evidence presented demonstrated he maintained a reasonable degree of interest, concern, or responsibility as to the minor's welfare. In support, respondent contends the evidence showed (1) he attended court proceedings, (2) he reached out to the caseworker to establish contact, (3) he was unable to visit with the minor because visits were not scheduled, and (4) he was never given the option to engage further because the caseworker simply did not reach out.

¶ 34 As the State argues, we find respondent mischaracterizes the evidence presented. The evidence showed the minor's caseworkers made numerous attempts to contact respondent by telephone and at his residence. Respondent was aware of the need to complete services but made no efforts to contact the minor's caseworkers to discuss or receive additional details concerning the required services or to seek visitation with the minor. Based on the evidence presented, we cannot say the trial court's finding respondent was an unfit parent by failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare was against the manifest weight of the evidence.

¶ 35

B. Best-Interest Finding

¶ 36 Respondent asserts the trial court's finding it was in the minor's best interests to terminate his parental rights was against the manifest weight of the evidence.

¶ 37 At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence termination is in the child's best interests. *Id.* at 367. When considering whether termination of parental rights would be in a child's best interest, the trial court must consider several statutory factors within the context of the child's age and developmental needs. 705 ILCS 405/1-3(4.05) (West 2016).

¶ 38 This court will not reverse a trial court's finding termination of parental rights is in a child's best interests 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). Again, a finding is against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Id.*

¶ 39 The minor was in an adoptive placement with her sister. The minor was loved by the foster parent. An older cousin also lived at that placement and helped care for the minor. Conversely, respondent never scheduled a visit with the minor, and Brocco-Tabora had never witnessed any evidence of interaction, let alone a bond, between the minor and respondent. Given the minor's need for permanence and consistency and respondent's lack of contact and effort as a parent, we find the trial court's finding it was in the minor's best interests to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 40

III. CONCLUSION

¶ 41

We affirm the trial court's judgment.

¶ 42

Affirmed.