

Nos. 1-11-0910 & 1-11-0971 (Cons.)

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

IN THE INTEREST OF:)	Appeal from the
)	Circuit Court of
ALEX T. AND DEVONTA T.,)	Cook County
)	
Minors-Respondents-Appellees,)	
)	
(THE PEOPLE OF THE STATE OF ILLINOIS,)	No. 05 JA 0283
Petitioner-Appellee,)	06 JA 068
)	
v.)	
)	Honorable
RACHEL S. AND ERSKINE T.,)	John L. Huff,
)	Judge Presiding.
Mother-Respondent-Appellant).)	

JUSTICE KARNEZIS delivered the judgment of the court.
Justices Hall and Rochford concurred in the judgment.

HELD: The circuit court's order finding respondent-mother unfit and terminating her parental rights was not against the manifest weight of the evidence. In case 11-0910, Respondent Rachel S. appeals from an order of the trial court

1-11-0910 & 1-11-0971 (Cons.)

finding her unfit pursuant to section 50/1 of the Adoption Act (750 ILCS 50/1 (West 2008)) and finding that it was in the best interest of Alex T. and Devonta T., the minors involved, to terminate respondent's parental rights. Respondent argues on appeal that: (1) the trial court's order finding respondent unfit was against the manifest weight of the evidence and contrary to the best interest of the children; and (2) the trial court's order terminating respondent's parental rights was against the manifest weight of the evidence. The respondent-father also appeals from the order of the trial court finding him unfit and terminating his parental rights in case 11-0971. For the following reasons, we affirm the judgment of the trial court.

BACKGROUND

Alex T. and Devonta T. are the biological sons of respondent-mother Rachel S., and respondent father, Erskine T. Respondent-mother is appealing from the trial court's order finding her unfit and terminating her parental rights in case No. 1-11-0910. Respondent-father filed a separate appeal in case No. 1-11-0971. The appeals were consolidated. Counsel in respondent-father's case filed a motion to withdraw pursuant to *Pennsylvania v. Finley*, 481 U.S. 551 (1987), which was taken with the case.

Alex T. was born on January 25, 2005, and was taken into protective custody two years later when respondent-mother left Alex on the sidewalk in the middle of winter because she was "fed up and stressed out and tired of the baby's father not helping." Devonta T. was taken into protective custody after his birth in January 2006. Alex was adjudicated neglected on the basis of injurious environment and abused based on a substantial risk of injury on June 15, 2006, and made a ward of the court. Thereafter,

1-11-0910 & 1-11-0971 (Cons.)

Devonta was also adjudicated neglected due to lack of necessary care and abused due to a substantial risk of injury. He was also made a ward of the court and was placed under the guardianship of the Illinois Department of Children and Family Services (DCFS).

The State filed petitions to terminate parental rights on behalf of both boys on November 9, 2009.

Fitness Hearing

Edward Witherspoon, a caseworker from Lakeside Community Committee, testified that he was assigned to the family's case from October 2007 to March 2009. When Mr. Witherspoon was assigned to the case, the permanency goal was to return the children home in 12 months. Respondent-mother was assessed for services in October 2007 and it was recommended that she participate in couple's counseling with respondent-father, individual counseling, parenting coaching classes and complete a psychological evaluation. It was also recommended that respondent-mother have weekly supervised visitation with Alex and Devonta.

Mr. Witherspoon testified that respondent-mother participated in the psychological evaluation in December 2007 and thereafter began individual therapy at Hannefaa Booker and Associates in 2008. Respondent-mother was discharged from individual therapy after a year because the therapist reported that respondent-mother had gone as far as she could.

Based on respondent-mother's noted cognitive delays, it was recommended that she complete a parenting class involving a parenting coach. The goal of the parenting

1-11-0910 & 1-11-0971 (Cons.)

coaching was to help respondent-mother learn to manage her children appropriately.

Respondent-mother participated in this program, but the program was terminated in

December 2008, due to respondent-mother's failure to make enough progress.

Respondent-mother never began couple's counseling, despite a referral to do so.

Mr. Witherspoon also testified that respondent-mother was allowed weekly supervised visits with Alex and Devonta. Respondent-mother's participation was sporadic. Mr. Witherspoon estimated that respondent-mother's attended 65 to 70% of the visits. Initially, the visits were supervised by the children's foster mother, Sarah W, but Mr. Witherspoon began supervising the visits in November 2007. When respondent-mother did attend the visits, she would "just sit back and observe as both boys ran around" or sit on the couch while the boys played. Respondent-mother did try to engage Alex, but had a difficult time with Devonta.

Two unusual incidents occurred during respondent-mother's visits. Both boys had allergies and were on a "strict diet." In February 2008, Devonta threw up after a visit with respondent-mother. Respondent-mother had brought food to the visit that was not on the list of approved foods provided by the foster mother. Although respondent-mother had been provided with a list of appropriate foods for the boys, she continued to bring food that was not allowed. The second incident occurred in March 2008.

Respondent-mother was allowed to escort the children out to the car with the foster parent after the supervised visit. Devonta broke away from respondent-mother and was stopped by the foster parent before he could run into the street. Mr. Witherspoon testified that there were some serious concerns about the children' health and safety

1-11-0910 & 1-11-0971 (Cons.)

after this incident.

In February 2009, the permanency goal was changed to substitute care pending termination of parental rights. Mr. Witherspoon testified that the goal changed because respondent-mother had not made satisfactory progress. When this occurred, respondent-mother stopped coming to visit Alex and Devonta.

Mr. Witherspoon testified that respondent-mother has some cognitive defects and exhibited less than minimal parenting skills. Respondent-mother was not allowed unsupervised visits. Mr. Witherspoon stated that one time Devonta wet himself and respondent-mother either did not know what to do or just chose not to do anything. Mr. Witherspoon explained that in order to parent Alex and Devonta, respondent-mother would need a support system "close to 24 hour care" on a "continuous basis". However, respondent-father was unwilling to help and there was no agency that could provide 24-hour care on a continuous basis.

Jordonna McBee, a caseworker at Lakeside Community Center, took over the family's case in March 2009. When Ms. McBee took over the case, respondent-mother had not yet completed individual therapy or couple's counseling, and had not initiated steps to obtain assistance with keeping a job and living independently. Ms. McBee testified that respondent-mother failed to keep in touch with her. In fact, respondent-mother did not contact Ms. McBee for over five months. Respondent-mother made one contact with Ms. McBee in September 2009, at which Ms. McBee informed her of the services that were necessary for reunification. Respondent-mother never engaged in any further services.

1-11-0910 & 1-11-0971 (Cons.)

Andrea Robinson testified that in December 2007, while she was working at Hannefaa Booker and Associates, she was assigned as respondent-mother's parenting coach. It was her job to teach respondent-mother to manage her children appropriately. Over a year period, respondent-mother attended only 13 out of 30 scheduled sessions. During the sessions she did attend, Ms. Robinson observed that respondent-mother loved her children, but had difficulty parenting without assistance and was unable to repeat lessons learned in prior sessions. Despite repeated conversations about being prepared to take care of the children, respondent-mother often arrived for sessions with no diapers, pull-ups, wipes or extra clothing for the children. Respondent-mother also brought food to the visits that was not on the approved list. Respondent-mother also behaved in a manner that raised safety concerns. Ms. Robinson was present when respondent-mother was walking the children to the car after a visit and Devonta broke free and ran for the street, but was stopped by the foster mother, Sarah W. Respondent-mother told Ms. Robinson that she knew she should have been walking between Devonta and the street. Another time, when they were eating at McDonald's, Alex got lost. When she could not find him, respondent-mother sat back down and started eating.

Respondent-mother admitted to Ms. Robinson that she could not parent on her own without assistance. Respondent-mother could not rely on anyone to assist her with parenting. After one year, parenting coaching was discontinued due to respondent-mother's failure to make progress.

Sarah W., Alex and Devonta's foster mother also testified. Devonta was placed

1-11-0910 & 1-11-0971 (Cons.)

with her in June 2006, and Alex in August 2006. She shared the same safety concerns expressed by other witnesses. She also remarked that in 2009, respondent-mother only visited Alex and Devonta six times. When she did visit, respondent-mother brought food that was not on the approved list. Sarah W. spoke to respondent-mother several times, and even included photos of the appropriate foods, but respondent-mother failed to adhere to the list.

Termination Hearing

A separate hearing to determine whether it was in the minors' best interests to terminate parental rights was held on November 19, 2010.

Ms. McBee testified that Alex was now six years old and Devonta was four years old. The boys had lived with Sarah W., since 2006. Ms. McBee stated that Sarah W., was a sales manager with a catering company and worked from home. Both boys were very attached to Sarah W., and called her "mommy."

Ms. McBee also testified that Alex grew out of any autistic and developmental delays and that both children were reading. Ms. McBee opined that it was in the best interest of the children to terminate respondent-mother's parental rights and allow Sarah W. to adopt them. Ms. McBee emphasized that the children did not know their biological parents.

Sarah W., also testified. She stated that she wanted to adopt Alex and Devonta because she considers them to be her family. She wants to continue to allow the boys visits with their biological parents. Both boys are involved in multiple activities.

Sarah W. detailed how early on Alex exhibited autistic symptoms so she took him

1-11-0910 & 1-11-0971 (Cons.)

to be evaluated. As a result, Alex was given developmental, occupational and speech therapies, which he participated in for a year. Sarah W., testified that Alex no longer exhibits any signs of autism and is thriving.

At the end of the best interest hearing on December 16, 2010, the court found it was in the best interest of Alex and Devonta to terminate respondent-mother's parental rights and appoint a guardian with the right to consent to their adoption.

The State filed a motion requesting that the court reconsider whether respondent-mother and respondent-father were unfit under ground (b) for failing to demonstrate interest, concern, or responsibility toward Alex's and Devonta's welfare. The State also requested that the court specify which nine-month periods after the initial nine month period after adjudication that respondent-mother was unfit for failing to make progress under section 50/1(D)(m)(iii).

The court then ruled that the State proved that respondent-mother and respondent-father were unfit under ground (b). In addition, the court entered an amended Termination Hearing Order. In the forty-nine page written opinion, the court supplemented and amended its original findings of fact and conclusions of law. The court found that respondent-mother was unfit pursuant to section (b). In addition, the court found respondent-mother unfit under section (m)(iii) for failing to make progress towards the return of Alex and Devonta. The court specified three nine-month periods with respect to Alex and four nine-month periods with respect to Devonta. It is from this order that respondent-mother now appeals.

ANALYSIS

1-11-0910 & 1-11-0971 (Cons.)

Respondent-mother argues that the trial court's order finding her unfit was against the manifest weight of the evidence and contrary to the best interest of the children. We disagree.

The involuntary termination of parental rights is a two step process. First, the State must prove by clear and convincing evidence that a parent is unfit pursuant to the grounds set forth in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2008)). If a determination of unfitness has been made, the trial court may then determine whether termination of parental rights is in the best interest of the child. 705 ILCS 405/2-29 (West 2008); *In re D.F.*, 201 Ill. 2d 476, 495 (2002). "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). A reviewing court will not overturn a trial court's dispositional decision regarding a minor unless it is against the manifest weight of the evidence. *In re J.C.*, 396 Ill. App.3d 1050, 1060 (2009). A trial court's decision is against the manifest weight of the evidence only when the opposite conclusion is clearly apparent. *In re Faith B.*, 359 Ill. App. 3d 571, 573 (2005).

As previously discussed, the trial court found respondent-mother unfit pursuant to sections 50/1(D)(b) and (m)(iii). Pursuant to these sections, a person is considered unfit for:

“(b) Failure to maintain a reasonable degree of interest, concern or responsibility as to the child’s welfare.

* * *

(m) Failure by a parent * * * (iii) to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act. If a service plan has been established as required under Section 8.2 of the Abused and Neglected Child Reporting Act to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, 'failure to make reasonable progress toward the return of the child to the parent' includes (I) the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care within 9 months after the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987 and (II) the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period after the end of the initial 9-month period following the adjudication under Section 2-3 or 2-4 of the Juvenile Court Act of 1987." 750 ILCS 50/1(D)(b), (D)(m)(iii) (West 2008).

In this case, the court found that respondent-mother was unfit under section 50/1(D)(b) because she did not have a reasonable degree of interest, concern or responsibility for Alex or Devonta. The court found that respondent-mother did not exercise a reasonable degree of interest, concern or responsibility when she abandoned

1-11-0910 & 1-11-0971 (Cons.)

Alex on the sidewalk in 2005. The court also noted that several agencies, in addition to the foster mother, attempted to assist respondent-mother to address her personal problems and teach her minimal parenting skills. The court noted that those efforts "never bore fruit." In addition, respondent-mother's significant intellectual deficiencies prevent her from applying the parenting skills she learned through coaching and therapy. Furthermore, respondent-mother admitted that she could not parent her children unassisted and there was no one who could reliably assist her.

Respondent-mother argues that the court's determination that she was unfit under section 50/1(D)(b) of the Adoption Act was against the manifest weight of the evidence because she did maintain a reasonable degree of interest, concern and responsibility toward's Alex's and Devonta's welfare because she "attended all court hearings, participated in a [sic] visits when she was physically able to do so, and did not quit any of her services but was involuntarily terminated by the service provider." We disagree.

As the record reveals, respondent-mother left Alex on the sidewalk in the middle of winter and continually failed to demonstrate an interest, concern or responsibility in Alex or Devonta's welfare. Respondent-mother failed to complete several services required for reunification, including individual therapy, couples counseling, as well as obtaining assistance to maintain employment and help to live independently. Of the services she did attend, her attendance was sporadic. Ms. Robinson testified that respondent-mother attended 13 out of 30 parenting coaching classes. Ms. McBee testified that when she took over respondent-mother's case, it took respondent-mother

1-11-0910 & 1-11-0971 (Cons.)

five months to contact her. In addition, Sarah W., testified that respondent-mother failed to show up for visits with Alex and Devonta. She never sent cards, letters or gifts. When she did visit the children, Respondent-mother sat on the couch and watched the children play. Respondent-mother also continually brought foods that were not on the approved list to visits with the children, despite being given a list of approved foods several times. Based on our review of the record, we cannot say that the trial court's finding of unfitness pursuant to section 50/1(D)(b) was against the manifest weight of the evidence.

Respondent-mother also argues that the trial court's finding of unfitness under section 50/1(D)(m)(iii) was against the manifest weight of the evidence. Respondent-mother contends that she made reasonable progress as she "completed some services, attended each and every court hearing, and was hampered in her effort to have the children returned by the agency's failure to investigate the group of people that would act as her support system and assist her in parenting."

The trial court found three nine-month periods from October 2007 to January 2010, in which respondent-mother failed to make any reasonable progress regarding Alex. The trial court also found four nine-month periods where respondent-mother failed to make reasonable progress towards the return of Devonta.

With respect to Alex's nine-month period from October 9, 2007 to July 9, 2008, the court found that respondent-mother failed to make reasonable progress because "[a]lthough [she] continued to attend her individual therapy and parent coaching sessions, she remained in the abusive relationship with [respondent-father], failed to

1-11-0910 & 1-11-0971 (Cons.)

engage in additional services for which she was assessed and failed to follow the recommendations of her therapist and coach." The court also found that respondent-mother failed to make reasonable progress with respect to Alex during the nine-month period of July 10, 2008 to April 10, 2009. The court noted that Ms. Robinson recommended discontinuing parent coaching due to respondent-mother's limited progress. Similarly, the court found no reasonable progress during the period of April 11, 2009 to January 11, 2010, because respondent-mother failed to engage in any services and her visits with Alex were sporadic.

With respect to Devonta, the court found that its analysis of respondent-mother's reasonable progress regarding Alex, was also applicable to determining whether reasonable progress was made toward reunification with Devonta. As to Devonta, the court found that respondent-mother was unfit pursuant to section 50/1(D)(m)(iii) for failing to make reasonable progress from March 16, 2007 to December 16, 2007, December 17, 2001 to September 17, 2008, September 18, 2008 to June 18, 2009, and from September 19, 2009 to March 19, 2010.

Respondent-mother takes the position that she made reasonable progress because "she completed services requested of her except that she was involuntarily [terminated] from parenting and therapy."

Reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *In re M.C.*, 201 Ill. App. 3d 792, 798 (1990). The benchmark for measuring reasonable progress is whether "the parent's compliance with the services plans and the court's directives, in light of the condition which gave rise to the

1-11-0910 & 1-11-0971 (Cons.)

removal of the child, and in light of other conditions which later became known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). This court has held that reasonable progress exists when:

"the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the near future, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent will have fully complied with the directives previously given to the parent in order to regain custody of the child." *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991).

In this case, the evidence showed that respondent-mother failed to complete the services recommended. Although she did attend parenting coaching and individual therapy, she was involuntarily terminated after missing numerous sessions and failing to make progress. Accordingly, there was no evidence to suggest that either Alex or Devonta could be placed in respondent-mother's care at anytime in the near future.

Furthermore, by respondent-mother's own admission, she was unable to parent Alex and Devonta without assistance. When asked to identify persons who could provide constant and reliable assistance, respondent-mother was unable to do so. The evidence established that there was no organization that could provide 24-hour parenting assistance for respondent- mother. Thus, we conclude that the court's

1-11-0910 & 1-11-0971 (Cons.)

unfitness finding was not against the manifest weight of the evidence.

Respondent-mother argues that the trial court's finding that it was in the children's best interest to terminate parental rights was against the manifest weight of the evidence. Specifically, respondent-mother argues that when considering the best interest factors, the trial court did not give due consideration to the fact that the foster mother is a Caucasian single parent and the children are African American.

The Juvenile Court Act of 1987 (Act) (705 ILCS 405/1-3(4.05) (West 2008)) provides that the following factors should be considered in determining the best interests of the child, within 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;
- © 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;

1-11-0910 & 1-11-0971 (Cons.)

- (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;
- (l) 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 2008).

Additionally, the court may consider the nature and length of the child's relationship with the present caregiver and the effect on the child's emotional and psychological well-being of a change in placement. *In re Jaron Z.*, 348 Ill. App. 3d 239, 262 (2004).

A trial court's determination of what is in a child's best interests will not be reversed on appeal unless that determination is against the manifest weight of the evidence. *In re Marriage of Parr*, 345 Ill. App. 3d 371, 376 (2003). A decision is against the manifest weight of the evidence where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence. *In re Marriage of Main*, 361 Ill. App. 3d 983, 989 (2005).

In determining whether or not to terminate parental rights in this case, the court

1-11-0910 & 1-11-0971 (Cons.)

stated, "I have considered the factors, the best interest factors that are in 405-13(4.05). And I will go through each one of these factors to the extent it applies." The court noted that Sarah W., took good care of Alex and Devonta and allowed them to develop their passions. The court observed that Sarah W., had met all the physical safety and welfare factors for the children and included praise for Sarah W. for her work with Alex and his autism. The court noted that the children are loved and know they are loved by Sarah W., and her family. Allowing the children to stay in Sarah W's home would be the least disruptive placement because the children had formed a bond with her. Furthermore, the court remarked on Sarah W.'s willingness to continue helping to develop a relationship between the children and respondent-mother.

The record belies respondent-mother's claim that the court did not consider the difference in race between Sarah W., and the children. The court specifically found:

"Regarding the development of the children's identity, [respondent-mother's counsel] has made the issue that these minors are [of] African American descent. Ms. W. is Caucasian. I find that, as a matter of law, that is not a significant barrier to adoption of these children, and therefore should not be a significant barrier to finding that it's in their best interest that their parental rights be terminated,"

When considering all the factors, we find the trial court's best interest determination to be supported by the manifest weight of the evidence.

For the foregoing reasons, we affirm the judgment of the circuit court in case No. 1-11-0910.

1-11-0910 & 1-11-0971 (Cons.)

With respect to case No. 1-11-0971, the appeal of respondent-father, we have carefully reviewed the record in this case and find no issues of arguable merit. Therefore, counsel's motion for leave to withdraw as counsel for respondent-father with respect to case No. 1-11-0971 is granted.

Affirmed.