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2011 IL App (3d) 110506-U

Order filed December 5, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> D.G. and E.G.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-11-0506
)	Circuit Nos. 08-JA-59 and
v.)	09-JA-74
)	
Dian C.,)	Honorable
)	Mark E. Gilles,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Lytton and McDade concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings that the respondent failed to make reasonable progress toward the return home of the minors and that it was in their best interest to terminate her parental rights were not against the manifest weight of the evidence.

¶ 2 The trial court found the respondent, Dian C., unfit to parent the minors, D.G. and E.G.

Following a best interest hearing, the trial court determined that it was in the minors' best interest to terminate the respondent's parental rights. The respondent appeals, arguing that: (1) the State

failed to prove that she was unfit by clear and convincing evidence; and (2) the trial court's finding that it was in the minors' best interest to terminate her parental rights was against the manifest weight of the evidence. We affirm.

¶ 3

FACTS

¶ 4 On March 18, 2008, the State filed a juvenile petition alleging that D.G., who was born on March 13, 2008, was neglected by reason of an injurious environment. The petition alleged in part that the respondent: (1) had a finding of unfitness from July 1999 to October 16, 2006, and was again found unfit on April 9, 2007; (2) had not completed services that would result in the return home of D.G.'s siblings; and (3) had lied to the Department of Children and Family Services (DCFS) about her pregnancy with D.G.

¶ 5 On April 28, 2008, the respondent was found to be dispositionally unfit based on her prior juvenile cases. At the hearing, she was advised to cooperate with DCFS and comply with the terms of the service plans, or risk termination of parental rights. Respondent was ordered to cooperate with DCFS or its designee; execute all releases; obtain a drug assessment and complete any necessary treatment; perform four random drug drops per month; undergo a psychological evaluation; successfully complete counseling, parenting classes, and domestic violence classes; and obtain and maintain stable housing.

¶ 6 E.G. was born on March 8, 2009. On March 12, 2009, that State filed a petition alleging that E.G. was neglected because the respondent: (1) had previously been found unfit and there was no subsequent finding of fitness; (2) had not completed services; (3) had missed 10 of the last 28 drug drops; and (4) continued to lie about her relationship with the minors' father, her husband H.G. E.G. was adjudicated neglected on May 11, 2009.

¶ 7 On June 9, 2010, the State filed two petitions for termination of parental rights. The petitions alleged that the respondent failed to make reasonable progress toward the return of the minors to her care during the nine-month period between May 11, 2009, and February 11, 2010. The cause proceeded to a hearing on April 13, 2011.

¶ 8 At the hearing, the State introduced the respondent's records from Lifeline Family Services, which showed that the respondent had missed approximately 20 of 46 scheduled drug drops during the nine-month period. The State also called the respondent's caseworker, Jana Wilson, to testify. Wilson testified that the respondent was court-ordered to address her relationship with H.G. as part of her individual counseling, and that she had to be "open and honest" regarding her relationship with him. DCFS was concerned about the respondent's ongoing relationship with H.G. because he had a past history of domestic violence, and he was not completing services. Wilson stated that she asked the respondent about her relationship with H.G. throughout the nine-month period, and the respondent continually denied being in a relationship with him.

¶ 9 Specifically, Wilson testified to an incident on August 28, 2009. She stated that as she approached the respondent's home for an unscheduled visit, she saw an African-American male on the front porch who she believed to be H.G. The respondent denied that it was him, and instead said that it was "Ed." When Wilson asked to speak with Ed, the respondent said that Ed did not like DCFS and did not want to meet her. The respondent further indicated that while she had lied to Wilson several times in the past about her relationship with H.G., she was not lying at that moment, and the person in her home was Ed.

¶ 10 In addition, the respondent had given birth to another child, J.G., in May 2010, and H.G.

was the father. Wilson did not remember the respondent ever admitting to a relationship with the father during the nine-month time frame.

¶ 11 Wilson also testified to an incident on December 16, 2009, where she asked the respondent to sign a release of information from the housing authority so that she could confirm that the respondent was going to be living in section eight housing. The respondent refused to sign the release because she did not want anyone to know about her juvenile court involvement.

¶ 12 Wilson acknowledged that the respondent began counseling in August 2009, that she had attended 47 out of her scheduled 49 visitations, and that she had previously completed parenting classes. She also admitted that the respondent had completed a drug and alcohol assessment prior to the beginning of the nine-month period, and she was found not to need treatment.

¶ 13 The State also called the respondent as a witness. The respondent admitted that the father of J.G. was H.G. She also testified that during the nine-month period she had "off and on" sexual relations with him.

¶ 14 The trial court ultimately found the respondent to be unfit, and stated that the respondent had not made reasonable progress due to her ongoing relationship with H.G. The court reasoned:

"To look at the struggle that this court has had with these two individuals, to look at the struggle the case workers have had dealing with the ongoing relationship between [the respondent] and [H.G.] makes it a much easier decision for me as to whether reasonable progress was made as to that issue, an issue that has always been important in this courtroom, has always been important by the case workers, and has always been made clear to [H.G.] and to [the respondent].

*** If she wants to have a relationship with [H.G.] and then simply say it's only sexual, that's not reasonable progress."

¶ 15 The court then continued the matter for a best interest hearing and ordered a bonding assessment. The assessment consisted of interviews with the caseworker, E.G.'s foster mother, D.G.'s foster mother, and the respondent. The examiner also observed the respondent with E.G. for half an hour and with D.G. for half an hour. Finally, the examiner gave the respondent a personality test, but the respondent left many of the questions blank. The examiner arranged for the respondent to come in at a later time to finish the exam with the aid of a support staff member, but the respondent did not come in to complete the test.

¶ 16 The examiner found that the respondent "was not observed as demonstrating strength in the four categories assessed, which included structure, challenge, nurturance, and engagement, however, her strongest of the four areas assessed were challenge and structure." The examiner further wrote that the respondent "was not observed as holding a healthy parent-child bond with [D.G.] or [E.G.]." In contrast, the best interests report prepared by DCFS noted that the minors called their foster mothers "Mommy," and that the foster families were loving and appropriate with the minors. The foster families expressed a willingness to adopt the minors if they ever became available for adoption.

¶ 17 Prior to the best interest hearing, the respondent filed a motion for restoration of fitness alleging that she had substantially completed all her court-ordered services. At the hearing, Wilson agreed that the respondent had substantially completed her services.

¶ 18 The respondent also testified at the best interest hearing. She stated that the visits with

her children were "[t]errific." She explained that she had difficulty with the minors during the bonding assessment because they wanted to play with other toys that were not available to them instead of the toys that the respondent had. She further testified that the minors were affectionate toward her.

¶ 19 At the conclusion of the hearing, the trial court found that it was in the best interests of the minors to terminate the respondent's parental rights. The court relied upon the bonding assessment, and stated that "there just wasn't that bond which I would have needed to have found to believe that not terminating your parental rights would be in the best interest of the children[.]" The court also stated that the needs of the children were being well met by their foster homes.

¶ 20 The respondent appealed.

¶ 21 ANALYSIS

¶ 22 On appeal, the respondent argues that the State failed to prove by clear and convincing evidence that the respondent was unfit under the Adoption Act. 750 ILCS 50/1(D) (West 2008). We disagree.

¶ 23 A trial court will find a mother unfit when she fails to make reasonable progress toward the return of her children. 750 ILCS 50/1(D)(m)(ii) (West 2008). The burden is on the State to prove by clear and convincing evidence that the mother failed to make reasonable progress "within 9 months after an adjudication of neglected or abused minor" or "any 9-month period after the end of the initial 9-month period." 750 ILCS 50/1(D)(m)(ii), (D)(m)(iii) (West 2008). Progress is measured by the parent's compliance with court directives, DCFS service plans, or both. *In re K.P.*, 305 Ill. App. 3d 175 (1999).

¶ 24 We review a trial court's unfitness determination under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's decision is contrary to the manifest weight of the evidence where the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based upon the evidence presented. *In re D.F.*, 201 Ill. 2d 476 (2002).

¶ 25 The trial court's determination that the respondent had not made reasonable progress was not against the manifest weight of the evidence. The respondent was court-ordered to be "open and honest" regarding her relationship with H.G., and to address her relationship with him as part of her individual counseling. In fact, one of the reasons E.G. was adjudicated neglected was that respondent had lied about her relationship with H.G.

¶ 26 In the instant case, the respondent not only failed to address her relationship with H.G., but she also attempted to hide her relationship from DCFS. According to the caseworker, the respondent continually denied that she was in a relationship with H.G., but she later admitted that she had "off and on" sexual relationships with him. She further admitted that she had lied to DCFS several times in the past about her relationship with H.G. The respondent also attempted to hide her pregnancy with J.G. from DCFS, despite the fact that one of the allegations underlying the neglect adjudication of D.G. was that the respondent had lied to DCFS about her pregnancy with the minor.

¶ 27 The respondent argues that she was never advised that her parental rights could be terminated based on her continuing relationship with H.G. Initially, we note that this argument is waived because it was not addressed in the court below. *In re Kenneth J.*, 352 Ill. App. 3d 967 (2004). In addition, the respondent's parental rights were terminated because of her failure to be

honest about her relationship, not because of the relationship *per se*. While the respondent should not necessarily have to divorce her husband in order to preserve her parental rights, it was important for her to be open about her relationship with H.G. to DCFS because H.G. had domestic violence in his past and had done nothing to restore his fitness. This is especially true since the trial court found that H.G. would be around the minors if they were returned to the respondent.

¶ 28 In addition to hiding her ongoing relationship with H.G., the respondent failed to cooperate with DCFS by refusing to sign a release to verify that she was applying for section eight housing, and she missed almost half of her drug drops. While it is not clear to us why the respondent needed to continue drug drops once her drug and alcohol assessment stated that she no longer needed treatment, we acknowledge that the respondent had a history of drug use, and she has not argued on appeal that her services were inappropriate. Accordingly, the trial court's conclusion that the respondent had failed to make reasonable progress was not against the manifest weight of the evidence.

¶ 29 The respondent also argues that the trial court's finding that it was in the best interests of the minors to terminate her parental rights was against the manifest weight of the evidence. Once the trial court has found the parent to be unfit, all considerations must yield to the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347 (2004). Accordingly, at the best interest hearing, the focus shifts from the parent to the child's interest in a stable, loving home life. *Id.* At the best interest stage, the State must prove by a preponderance of the evidence that the termination of parental rights is in the minors' best interest. *Id.* In considering the minors' best interest, the trial court must consider statutory factors in light of the minors' age and

developmental needs, including: (1) the physical safety and welfare of the minors; (2) the development of the minors' identity; (3) the familial, cultural and religious background of the minors; (4) the minors' sense of attachment, including love, security, familiarity, and continuity of relationships with their parental figures; (5) the wishes of the minors; (6) the minors' community ties; (7) the minors' need for permanence, including stability and continuity of relationships; and (8) the preferences of persons available to care of the minors. 705 ILCS 405/1-3(4.05) (West 2008). On appeal, a trial court's decision to terminate the rights of a parent to their child will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005).

¶ 30 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in the minors' best interest to terminate the respondent's parental rights. The minors had been living in their respective foster homes almost since birth, and their foster families were the only families they had known. The minors were developing well, and their foster families wished to adopt them. In addition, during the bonding assessment, no healthy parent-child bond was observed between the respondent and the minors. As the minors have been in foster care since their birth, their need for permanency is great. Despite the fact that the respondent had substantially completed services at the time of the best interest hearing, the trial court did not manifestly err in deciding that the minors would have a greater likelihood of permanence with their foster families than with the respondent. Accordingly, we hold that the trial court's finding regarding the best interests of the minors was not against the manifest weight of the evidence.

¶ 31

CONCLUSION

¶ 32 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 33 Affirmed.