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No. 3--11--0010

Order filed April 20, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

In re Brighton R., Brandon R.,) Appeal from the Circuit Court
and Brittany R.,) of the 12th Judicial Circuit,
Minors) Will County, Illinois,
)
)
(The People of the State of)
Illinois,) Nos. 04--JA--130, 04--JA--131,
) and 04--JA--132
)
Petitioner-Appellee,)
)
v.)
)
Sandra R.,) Honorable
) Paula Gomora,
Respondent-Appellant).) Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Carter and Justice O'Brien concurred in
the judgment.

ORDER

Held: Evidence at trial was sufficient to establish that the respondent was unfit due to lack of interest, concern, or responsibility for her children's welfare. She did not visit the children over a six-year period, she did not send any gifts, letters, or cards, and she refused to complete service plan objectives. In addition,

terminating the respondent's parental rights did not violate her right to due process.

The trial court entered orders finding the respondent, Sandra R., to be an unfit parent and terminating her parental rights to the minors, Brighton R., Brandon R., and Brittany R. On appeal, the respondent argues that the trial court erred because: (1) the finding of unfitness was against the manifest weight of the evidence; (2) the court's oral order was insufficient with respect to Brighton; and (3) respondent was deprived of due process of law. We affirm.

FACTS

The record shows that the minors came to the attention of the Department of Children and Family Services (DCFS) on September 17, 2004, after the respondent was arrested on an open warrant. At the time of the arrest, Brandon was 11, Brittany was 10, and Brighton was 10 months old. Their case was assigned to Barbara Butler-Lanier at Guardian Angel Home (GAH) in Joliet, Illinois, and she has served as the caseworker for this family throughout these proceedings.

The original juvenile petition filed by the State contained only one dependency count, alleging that the children were dependent because the respondent was incarcerated. At the close of the first adjudicatory hearing, the State amended the original petition to conform to the evidence, and added a second count alleging that the respondent neglected her children by subjecting

them to an injurious environment. The respondent filed her first appeal to this court, and we reversed because the respondent had no notice of the neglect charges against her. *In re B.R., B.R., and B.R.*, No. 3--06--0449 (2007) (unpublished order under Supreme Court Rule 23).

On remand, the State filed a "First Supplemental Petition" on December 14, 2007, alleging two counts of neglect against the respondent. In count I, the State alleged that the respondent provided an injurious environment for the children. Count II alleged that she abandoned the children. The trial court found that the respondent neglected the minors on both counts of the supplemental petition. We affirmed the trial court's findings of neglect on December 29, 2009. *In re Brandon R., Brittany R., and Brighton R.*, No. 3--09--0147 (2009) (unpublished order under Supreme Court Rule 23).

Following the appeal, the State filed a motion to terminate parental rights against the respondent and all putative fathers. In July, the petition was supplemented as to Brighton only to include his putative father, Richard B.¹ The hearing on this

¹ George O. is the putative father of Brandon and Brittany, and he was named in the motion to terminate parental rights. The court's oral order of December 10, 2010, terminated the parental rights of George, as well as the respondent, Richard, and all whom it may concern.

matter took place December 1, 2010.

Lanier testified first for the State. She stated that she had been the caseworker on this case since December 1, 2004. Lanier explained that the respondent had three supervised visits with her children between February 2005 and April 2005. The respondent had not visited her children since April 22, 2005. During that last visit, Lanier testified that the respondent became aggressive with the children and accused them of providing false information to the caseworker that they had been left alone. Lanier recalled that the respondent pulled on Brittany, and that the minor tried to turn away from the respondent. Lanier ended the visit, and the respondent was asked to leave the building.

Lanier further testified that she had not received any requests for visitation after April 2005, although the record reveals that the respondent filed a motion for unsupervised visitation in 2006. The trial court denied the motion, but reiterated to the respondent that supervised visitation was still available to her. The respondent also requested visitation through her attorney in 2008. Her request for visitation was denied because Brandon and Brittany did not want to see the respondent, and Brighton did not know her.

Lanier also described the service plan tasks the respondent was required to complete. These requirements generally included:

(1) to secure housing and employment; (2) undergo a psychological evaluation; and (3) attend parenting classes. While Lanier stated on direct examination that the service plans remained the same throughout the years, she admitted on cross-examination that the only requirements left in the service plan included a psychological evaluation and parenting classes. The respondent did not complete the service plan tasks.

Brandon testified on behalf of the State. He stated that he had seen the respondent at numerous court appearances, but she did not acknowledge him. He also said he had never received any cards, letters, gifts, clothing, money or telephone calls from the respondent, although, according to Lanier's testimony, items could have been sent to the children via DCFS and GAH.

The respondent testified on her own behalf. She stated that visitation was usually arranged by Lanier calling her at work, and that after April 2005 Lanier stopped calling. The respondent also indicated that she did not want the foster mother present for visitation. The respondent complained she did not know how to locate her children, and that she did not approach them in court because she did not want to make them uncomfortable.

On cross-examination, the respondent admitted she wrote an email on December 14, 2004, where she said she had no intention of following the rules and if her parental rights are taken away, "so be it." She also said that she had been employed with Hobby

Lobby from February 2005 until February 2006, and that she had acquired an apartment for approximately three months. She further testified that she refused to get a psychological evaluation because she felt she did not need one and that there was no reason for visits to be supervised. In addition, she spent 30 days in the Tinley Park Mental Health Center to "prove a point"--that is, that she did not need an evaluation.

The trial court found that the respondent was unfit due to her lack of interest, concern, or responsibility for the children's welfare. Her opinion first addressed Brandon and Brittany. The court stated that the respondent's failure to visit her children since April 2005 was clear and convincing evidence that the respondent was unfit. Moreover, the court found that there was no justification for the lack of visitation since GAH provided bus passes for visitation and Hobby Lobby was a very short walking distance from GAH. The court perceived that the respondent was more interested in challenging the system instead of cooperating with GAH and DCFS in an effort to be reunited with her children. In particular, the court was troubled that the respondent would spend 30 days in a mental health facility to prove that she did not have a mental illness but: (1) did not provide records to show that she was not mentally unstable; and (2) could not spend 30 minutes with her children.

Regarding Brighton, the court found that no one had stepped forward to claim paternity, and that there had been no visitation, cards, letters, gifts, or telephone calls. Therefore, Brighton's father was also unfit.

At the best interests hearing, Brandon, who purported to be speaking for all three children, stated that they wanted to be adopted by the foster parents. The foster mom also expressed her desire to adopt Brandon, Brittany, and Brighton, and that there was a lot of love between the parents and children. When asked at the end of direct examination if there was anything else to add, the foster mom said, "[t]he only thing that I could say is from the moment they walked into my door, I knew that we loved them and that they were ours." The respondent testified that she will always love her children. The trial court found that it was in the children's best interest to terminate the respondent's parental rights, and the respondent appealed.

ANALYSIS

On appeal, the respondent contends that the trial court erred when it found her to be an unfit parent. The respondent also argues that the trial court's ruling was legally insufficient with regard to Brighton. Finally, the respondent alleges that she was denied due process of law because, through the actions of GAH and the trial court, it was predetermined that the minors would develop a bond with the foster family at the

expense of a relationship with respondent.

I. Unfitness

The trial court held that the respondent was an unfit parent because she failed to maintain a reasonable degree of interest, concern, or responsibility for the welfare of her children. 750 ILCS 50/1(D) (b) (West 2008). A reviewing court will not disturb a trial court's unfitness determination unless it is against the manifest weight of the evidence. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990).

When examining allegations under this section, the court must focus on the parent's reasonable efforts and not her success, and must also consider any circumstances that may have made it difficult for her to visit, communicate with, or otherwise show interest in the child. *In re Jaron Z.*, 348 Ill. App. 3d 239 (2004). Circumstances relevant to this determination include: (1) whether the conduct of others interfered with visitation; (2) whether the parent engaged in other conduct that exhibited interest in the minors' well-being, including sending letters and gifts, and making telephone calls if visitation was impractical or impossible; and (3) completion of service plan objectives. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). Infrequent and irregular visitation and noncompliance with a service plan is sufficient evidence to warrant a finding of unfitness. *In re Janira T.*, 368 Ill. App. 3d 883 (2006).

Our review of the record reveals that the evidence was sufficient to support the trial court's finding that the respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the children's welfare. Since this case began in 2004, the respondent has visited the children a total of three times, and not at all after April 22, 2005. In addition, the respondent has only requested visitation twice: the first time was when she filed a motion for unsupervised visitation and the second time was when she requested supervision through her attorney in 2008.

The respondent argues that visitation was not as readily available as Lanier asserted, and she also complains that GAH actually impeded her visitation. According to the respondent, she believed that GAH controlled visitation because GAH would call to notify her when the foster mother was available, and GAH stopped calling after April 2005. The respondent points out the fact that she never refused a scheduled visitation. She also testified that she did not know how to reach her children, so she could not call or email them.

The respondent's arguments are unpersuasive. First, the respondent impermissibly tries to shift the blame to the agency. However, when reviewing findings of unfitness, we are ultimately concerned with the efforts of the parent. *In re Gwynne P.*, 346 Ill. App. 3d 584 (2004). The ultimate success or failure of a

parent's efforts to show interest in the minor's well-being is not necessarily important; it is the effort itself that is of paramount importance. *Gwynne P.*, 346 Ill. App. 3d 584. Contrary to the respondent's argument that we should only consider the number of refused visits, courts have weighed the number of visits that actually took place against the number of visits allowed. See *Janira T.*, 368 Ill. App. 3d 883.

In the instant case, the respondent made little effort to visit her children. Even when she worked at Hobby Lobby, which was next to GAH, she did not stop in to request a visit. Moreover, the respondent's arguments ignore several statements where she admitted to refusing to see her children. The first was the respondent's own 2004 email where she invited GAH to begin proceedings to terminate her parental rights. Secondly, during the hearing on the motions to terminate parental rights, the respondent admitted to choosing not to exercise visitation. At that hearing, the following exchange occurred between the Assistant State's Attorney and the respondent:

"Q. You sought answers, but you didn't take the time to call [Lanier] to schedule a visit with your kids?

A. Absolutely. Because those visits shouldn't have been supervised. No one could provide any evidence why it was needed.

Q. You refused to visit if they were supervised?

A. No, I didn't refuse. I wanted people to answer why they were supervised and to look at the matter again.

Q. And the judge did look at it again in '06 and told you you could still visit supervised, and you chose not to?

A. I opted not to until the matter could be readdressed."

This exchange alone belies the respondent's claim that she did not know she could visit her children. Moreover, while the respondent claims she did not know she controlled visitation, she requested visitation twice, was represented by counsel throughout the proceedings, and was specifically informed by the trial court in 2006 that, although unsupervised visitation was unavailable, the respondent was still entitled to supervised visitation.

Even if the respondent felt she could not have visitation, she still could have sent letters, cards, gifts, money, or other items to her children. *Daphnie E.*, 368 Ill. App. 3d 1052. In fact, the respondent was specifically instructed that she could leave items for the children with DCFS and then those items would go to GAH for distribution. The respondent's excuse for not doing so is that she distrusted the whole system. However, there is no basis in the record justifying this level of distrust. Her argument also ignores the fact that DCFS only became involved as an intermediary at the respondent's request. Since the respondent went to DCFS for assistance with GAH, her argument

that she did not trust DCFS to reliably transport any items is unpersuasive.

Finally, the respondent remained noncompliant with her service plans, and, in particular, she adamantly refused to complete a psychological evaluation. She argues that her failure to complete the service plan tasks is irrelevant to the court's unfitness determination because the service plans were not designed to correct some parenting flaw that led to the removal of the children in the first place.

If there was no evidence in the record to suggest that the respondent may be laboring under a psychological illness, we might be inclined to agree with her argument. See *In re D.D.*, 309 Ill. App. 3d 581, 588 (2000) (stating that "[t]here is a natural tendency, once a case comes into the system, for the caseworker to prescribe services to address many different problems, those real and potential"). However, there was some evidence to suggest that the respondent was operating under a delusional belief system, not the least of which was a psychiatric screening form from the Will County Health Department expressing the same concern. Therefore, the respondent's refusal to undergo a psychological evaluation further indicates that she was not reasonably interested in getting her children back because she did not make any progress on her service plans.

While the respondent argues that she was never referred for

a psychological exam, and consequently that requirement cannot be held against her, she ignores other evidence showing that she occasionally refused to take service plans, constantly argued about her need for an evaluation, and spent 30 days at a mental health facility for observation but did not take an hour for an evaluation. Since the respondent has failed to visit her children for almost six years and has not made reasonable progress in her service plans, we hold that the trial court's determination of unfitness was not against the manifest weight of the evidence.

II. Sufficiency of Findings with Respect to Brighton

The respondent next argues that the trial court only made findings of unfitness with regard to Brandon and Brittany. Indeed, the trial court's unfitness determination began by specifically mentioning Brandon and Brittany and then explained why the respondent was unfit. The court concluded by mentioning Brighton, but only to briefly explain why the putative father, Richard, was also an unfit parent. Thus, the respondent alleges that because the trial court did not explicitly repeat the same findings with regard to Brighton, the court's order terminating the respondent's parental rights with regard to Brighton should be reversed.

We disagree. When read as a whole, the trial court's oral order clearly applied to all three children, and the court

repeatedly used the word "children" instead of singling out Brandon and Brittany. Over the past six years, the respondent did not treat Brighton any differently than Brandon or Brittany. Moreover, the concerns we addressed above, namely: (1) the respondent's failure to visit the children over a period of several years; and (2) her refusal to comply with the service plans, apply equally to Brighton as well as Brandon and Brittany. Since we can affirm the trial court on any legally sufficient ground, we choose to do so here. See *People v. Johnson*, 208 Ill. 2d 118 (2003).

III. Violation of Due Process

Finally, the respondent argues that she was denied due process of law because GAH's actions and the trial court's decisions ensured that the respondent and her children would not be reunited. In essence, she asserts that the interim decisions of the court in this case did not adequately and fairly balance the rights of the parties and thus she did not have a sufficient opportunity to be reunited with her children.

The respondent essentially relies on *In re O.S.*, 364 Ill. App. 3d 628 (2006), to make her argument. In *O.S.*, the mother was incarcerated for two years and was not allowed to have any visits with her son, O.S. *O.S.*, 364 Ill. App. 3d 628. After she was released, visitation with O.S. resumed, but the court ordered the foster parents, the mother, and even O.S.'s half-sisters to

inform O.S. that the woman he was visiting was "Jenny" instead of his mother. *O.S.*, 364 Ill. App. 3d at 632. Consequently, when the best interest hearing took place, O.S. was more attached his foster parents than Jenny. *O.S.*, 364 Ill. App. 3d 628.

The main concern in *O.S.* was that the court's actions led the mother to believe that she was progressing toward reunification when, in fact, the arrangement was ensuring that she would fail the best interests test. *O.S.*, 364 Ill. App. 3d 628. The court stated that "[w]hen the actions make the best interest hearing a futile gesture, there has been a violation of due process tainting the constitutionality of the termination of respondent's parental rights." *O.S.*, 364 Ill. App. 3d at 638.

Contrary to the respondent's assertion, GAH did not predetermine the outcome. As opposed to *O.S.*, this is not a case where the trial court's actions contributed to the deterioration of the bond between the respondent and the children. Instead, respondent's own failure to stay in contact with her children led to their eventual alienation from the respondent.

The respondent points to the foster mother's statement that she knew the children were hers as soon as they walked through the door as evidence that the foster parents and GAH had no intention of reunifying the respondent and the children. We refuse to read anything sinister into the foster mother's spontaneous expression of devotion for her foster children. In

addition, respondent's argument is simply not supported by the record. The foster mother brought the children to all three visits the respondent scheduled. Moreover, the permanency goal for the children continued to be return home up until 2009--four years after the respondent had stopped visiting. Simply put, the respondent had plenty of opportunities to demonstrate to the court that she wanted to be reunited with her children and failed to do so. Her refusal to cooperate is not a violation of due process.

CONCLUSION

For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

Affirmed.