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2011 IL App (3d) 110062-U

Order filed July 15, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

<i>In re</i> A.C., J.C., and H.C.,)	Appeal from the Circuit Court
)	of the 21st Judicial Circuit,
Minors)	Iroquois County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-11-0062
Petitioner-Appellee,)	Circuit Nos. 08-JA-18, 08-JA-19 and
)	08-JA-20
v.)	
)	
Armando R. and Gianna C.,)	Honorable
)	James B. Kinzer,
Respondents-Appellants).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices McDade and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's termination of the respondents' parental rights was against the manifest weight of the evidence because it considered evidence at the fitness hearing that occurred outside of the nine-month review period for both reasonable efforts and reasonable progress.

¶ 2 The trial court found that the State had proved that the respondents, Armando R. and Gianna C., were unfit to parent the minors A.C., J.C., and H.C. Subsequently, the court

found that it was in the best interests of the children to terminate the respondents' parental rights. The respondents appeal, arguing that: (1) the State failed to prove by clear and convincing evidence that the respondents were unfit; and (2) the court's finding that the termination of the respondents' parental rights was in the best interests of the children was against the manifest weight of the evidence. We reverse and remand in part and vacate in part.

¶ 3

FACTS

¶ 4

Gianna is the biological mother of A.C., J.C., and H.C. Armando is the biological father of A.C. At the start of the case, the respondents lived together with the children in an apartment. The Department of Children and Family Services (DCFS) became involved in the case after a hotline caller reported that there was no food in the house, the mother bathed H.C. every two weeks, she did not do laundry properly, she was manic depressive but did not take medication, and she had purportedly struck H.C. The caller also alleged that the father was unemployed and sat around the house in his underwear and watched pornographic movies. DCFS had received additional allegations that the father was physically abusive to H.C. and J.C., and that H.C. and J.C. were afraid of him. On June 13, 2008, the State filed three separate petitions for adjudications of wardship. The petitions alleged that A.C., J.C., and H.C. were neglected.

¶ 5

On August 15, 2008, the respondents admitted the allegations contained in the State's petitions. The trial court adjudicated H.C. neglected on October 8, 2008, and later that day entered a disposition order finding the respondents unfit to parent H.C. On October 15, 2008, the court adjudicated J.C. and A.C. neglected and then entered disposition orders

finding the respondents unfit to parent the children.

¶ 6 The children were initially placed with their maternal grandparents. However, in February 2009, the grandparents requested that H.C. be removed from their home because of her negative, aggressive behavior toward J.C. In May 2009, the grandparents requested that J.C. and A.C. also be placed in traditional care as a result of the grandparents' health conditions.

¶ 7 The respondents' unfitness disposition required them to cooperate with DCFS and to comply with the terms of their service plans. The mother's service plan required her to take psychotropic medication, as prescribed by her psychiatrist, attend all counseling appointments, complete a parenting class, maintain employment and stable housing, and take part in a domestic violence assessment. The father's service plan required him to attend counseling sessions, complete a parenting class, attend classes to obtain a general education diploma, participate in a domestic violence assessment, maintain stable employment, and attend anger management counseling.

¶ 8 On March 6, 2009, the court reviewed the respondents' progress in completing their respective service plans. At the hearing, the State indicated that the mother was doing well and was making reasonable progress and efforts. The DCFS reports filed in preparation for the hearing indicated that the mother had been attending counseling sessions since 2005 and had completed a parenting class. Additionally, the report noted that the father had completed a parenting class and attended individual counseling. However, the State told the court that the father had not made reasonable progress and efforts because he still needed to do additional services and assessments.

¶ 9 At the close of the permanency review hearing, the court found that the mother had made reasonable and substantial progress, as well as reasonable efforts, toward the return home of her children during the first five months of the case. The court verbally commended the mother and stated "Mom, you are doing a good job. I mean, a lot better job than a lot of moms I see here in juvenile court. *** And if you run into a problem in the future, at least you can point to the good job you have been doing in the past on this case." However, the court found that the father was "not doing quite as well." The court determined that the father had not made reasonable progress or reasonable efforts toward the return home of the children during the same period.

¶ 10 In September 2009, the court held a second permanency review hearing. The DCFS reports filed prior to the hearing indicated that the mother had completed a domestic violence assessment and received a report that required no follow up treatment. The mother also had completed a psychological evaluation and begun taking medication for her bipolar disorder and attention deficit/hyperactivity disorder, and she had maintained appropriate housing. The report noted that the father was laid off in September 2009 but had previously worked for a landscaping company. He also had received a domestic violence assessment in February 2009 that indicated he did not need further treatment, and he had been attending individual counseling.

¶ 11 At the close of the second permanency review hearing, the court found that the respondents' progress had improved, and that both the mother and the father had made reasonable efforts toward the return home of their children. The court did not make a specific reasonable progress finding. The respondents were rewarded for their efforts with

the institution of six-hour visits monitored by a third party, which began in November 2009. However, these visits were cancelled in February 2010 because the respondents frequently arrived late and left early, and altercations often erupted between the father and H.C. during these visits.

¶ 12 On August 20, 2010, the State filed a petition to terminate the respondents' parental rights. The petition alleged that the respondents were not fit parents because they had failed to make reasonable efforts to correct the conditions that were the basis for removal, they had not made reasonable progress towards the return of their children,¹ and they were unable to discharge their parental responsibilities as a result of mental impairment or illness. See 750 ILCS 50/1(D)(m)(i), (D)(m)(ii), (D)(p) (West 2008). The State alleged in support that the respondents had inadequately parented the minors, that they lacked financial stability, and that they had not progressed in addressing mental health issues.

¶ 13 The court heard the State's petition on October 14, 2010. The respondents' caseworker testified that their attendance at counseling sessions was sporadic. Further, the caseworker was unsure if the mother was still taking her psychotropic medication. She testified that the mother "was still not comfortable with parenting on the children" despite taking two parenting classes. The caseworker specifically noted that the mother struggled to lay down rules for all of the children during the supervised visits and often turned to her for assistance when the children's behavior got out of control. The caseworker voiced similar

¹ The petition did not state a nine-month period for judging reasonable progress, but the subsection cited in the petition indicated that it was the first nine months after the adjudication of neglect. See 750 ILCS 50/1(D)(m)(ii) (West 2008).

concerns regarding the fitness of the father. She explained that there were no longer concerns of domestic violence, but the respondents had not implemented the parenting skills they had learned while completing two parenting classes. Consequently, the caseworker did not feel that the respondents were able to properly parent the children if they were returned home.

¶ 14 At the end of the hearing, the court found that the State had proved by clear and convincing evidence that the respondents had failed to make reasonable progress and that each was unfit. In making its decision, the court noted that the mother failed to incorporate the lessons she had learned during her two parenting classes and that both respondents tended to focus more on their personal relationship than on their children. The court concluded that the respondents were unfit because they failed to make reasonable progress during the 26 months that the case had been active. The court did not make an oral finding on the other two alleged grounds of unfitness. The written order stated that the respondents were "found unfit by clear and convincing evidence pursuant to 750 ILCS 50/1(D) due to both parents failing to correct the conditions and make progress to remedy the problems that led to the removal of the minor[s] from the home."

¶ 15 The best interest hearing was held approximately one month later. The children's social worker testified at the hearing that all of the children had expressed a desire to live with their grandparents. The social worker further stated that the grandparents were willing to adopt all three of the children and were capable of providing them with a stable home environment. As of the date of the hearing, the children had lived with their grandparents for less than a month, as they had been previously removed from the grandparents' home in

the spring of 2009 and placed with traditional foster families.

¶ 16 The father and mother testified that they were making progress and felt that they would be better parents than the childrens' maternal grandparents. The respondents also indicated that they had been attending counseling sessions regularly. In spite of the respondents' testimony, the court found that the State had proved by clear and convincing evidence that it was in the best interests of the children to terminate the respondents' parental rights. The court cited the stability of the children's relationship with their maternal grandparents and the bonding which occurred while they were placed with their grandparents throughout the court proceedings. The court acknowledged that the grandparents' age may limit their participation in some parenting activities, but commented that there was a possible benefit of placing the children with older, more mature parents. The court concluded that the "State [had] proved that [it was] in the best interests of each of the children that the parental rights be terminated and that the prospective adoption by the grandparents [was] overall the primary reason for [its] determination." The respondents appeal.

¶ 17 ANALYSIS

¶ 18 On appeal, the respondents first argue that the trial court's finding that the mother and the father were unfit parents was against the manifest weight of the evidence. Specifically, the respondents argue that the State failed to prove by clear and convincing evidence that: (1) they failed to make reasonable progress toward the return of their children within nine months of the neglect adjudication; (2) they failed to make reasonable efforts to correct the conditions that were the basis for the removal of the children; and (3) they were unable to discharge their parental responsibilities due to a mental impairment or illness.

¶ 19 The respondents argue first that the trial court's finding that they had not made reasonable progress toward the return of their children was against the manifest weight of the evidence.

¶ 20 Section 1(D)(m)(ii) of the Adoption Act permits a court to find a parent unfit when he or she fails to make reasonable progress toward the return of the child within nine months after a neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2008). A parent's progress is measured by the "parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child" or that later became known. *In re C.N.*, 196 Ill. 2d 181, 216 (2001). The State has the burden of proving by clear and convincing evidence that a parent failed to make reasonable progress within nine months of the neglect adjudication. *In re Tiffany M.*, 353 Ill. App. 3d 883 (2004).

¶ 21 We review a trial court's unfitness finding that is based upon a parent's failure to make reasonable progress under the manifest weight of the evidence standard. *In re Adoption of Syck*, 138 Ill. 2d 255 (1990). A trial court's finding is contrary to the manifest weight of the evidence if "the opposite conclusion is clearly evident [citation] or the determination is unreasonable, arbitrary, or not based on the evidence presented." *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 22 The State concedes that the court erred when it considered evidence outside of the nine-month period. We find that the trial court erroneously considered all of this evidence in making its ruling, as it referenced the fact that the respondents had not made reasonable progress in the 26 months that this case had been open. See *In re Reiny S.*, 374 Ill. App. 3d 1036 (2007) (court shall only consider evidence from the relevant time period in finding a

parent unfit). We further find, contrary to the State's contention, that this error was not harmless.

¶ 23 The evidence presented by the State regarding the appropriate nine-month period demonstrated that the respondents were making reasonable progress. The conditions that resulted in the removal of the children were domestic violence within the home, lack of proper hygiene of the children, and the mother's failure to take her medication for her mental condition. The record shows that the respondents were making reasonable progress because they had attended parenting classes, participated in domestic violence evaluations, and attended counseling, and the mother was taking medication for her psychiatric conditions. The court also made favorable findings concerning the respondents at the first two permanency review hearings. Therefore, we find that the court's determination of a lack of progress was unreasonable in light of the evidence and the court's earlier permanency review findings.²

¶ 24 The State argues in the alternative that it proved by clear and convincing evidence that the respondents failed to make reasonable efforts toward the return of their children. A parent may be found unfit if he or she fails to make reasonable efforts to "correct [] the

² If the State intended to introduce evidence of unfitness after the initial nine-month period as proof of unfitness occurring during a later period, it could do so; however, it must allege in its termination petition that the respondents were unfit for failing "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." 750 ILCS 50/1(D)(m)(iii) (West 2008).

conditions that were the basis for the removal of the child." *In re C.M.*, 305 Ill. App. 3d 154, 164 (1999) (quoting 750 ILCS 50/1(D)(m) (West Supp. 1997)). Our supreme court has instructed that a trial court is to consider a parent's efforts beginning on the date of its neglect, abuse, or dependency adjudication and ending nine months thereafter. *In re D.F.*, 208 Ill. 2d 223 (2003). Reasonable efforts is a subjective standard that focuses on the amount of effort that was reasonable for the parent whose rights are at stake. *C.M.*, 305 Ill. App. 3d 154.

¶ 25 We review a trial court's reasonable efforts findings under the manifest weight of the evidence standard. *In re A.P.*, 277 Ill. App. 3d 592 (1996). Applying this standard, we give great deference to the trial court's fitness findings and will not reverse its decision unless the opposite conclusion is clearly apparent. *Regan v. Joseph P.*, 286 Ill. App. 3d 889 (1996).

¶ 26 We initially note that the State did not limit its evidence of the respondents' efforts to the nine-month review period. The caseworker's testimony was the only evidence provided on behalf of the State at the unfitness hearing, and it spanned the length of the case. Specifically, the caseworker's testimony included references to the respondents' cancellation of visitations, parenting struggles during visitations, and job changes that all occurred after the relevant period. We find, however, that the nine-month evaluation period began on October 8, 2008, when the court adjudicated H.C. neglected, and ended nine months later on July 8, 2009. See *D.F.*, 208 Ill. 2d 223.

¶ 27 We further note that the record is devoid of a specific reasonable efforts finding made by the trial court. The court's ruling from the bench did not mention reasonable efforts, and its written order made only a general citation to section 1(D) of the Adoption Act. 750 ILCS

50/1(D) (West 2008). In accord with our reasonable progress holding, we determine that any finding of a lack of reasonable efforts was inconsistent with both the evidence and the court's earlier determinations at the first two permanency review hearings, where it found that the respondents had made reasonable efforts. Therefore, we reverse on this issue as well, finding that the State failed to present clear and convincing evidence of the respondents' failure to make reasonable efforts during the nine-month review period and the court's ruling was against the manifest weight of the evidence.

¶ 28 Finally, the respondents contend that the State did not prove by clear and convincing evidence that they were unable to discharge parental responsibilities as a result of mental impairment or illness. See 750 ILCS 50/1(D)(p) (West 2008). We note that the trial court did not make a specific finding on this unfitness grounds. Nevertheless, the State concedes in its brief that it did not prove that the respondents' purported mental impairment or illness made them unfit parents. We agree with the State's concession and find that the record demonstrates that the State failed to present clear and convincing evidence of the respondents' mental illness and the resulting impact on their parenting abilities.

¶ 29 Therefore, we reverse the court's unfitness finding and remand the cause for further proceedings.

¶ 30 The respondents also argue that the trial court's finding that it was in the best interests of the children to terminate their parental rights was against the manifest weight of the evidence. Since we have found the respondents were not unfit, we vacate the order terminating respondents' parental rights.

¶ 31 CONCLUSION

¶ 32 The judgment of the circuit court of Iroquois County is reversed, and the cause is remanded for further proceedings, and the order terminating respondents' parental rights is vacated.

¶ 33 Reversed and remanded in part; vacated in part.