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2011 IL App (3d) 110354-U

Order filed September 15, 2011

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2011

| | | |
|---------------------------------------|---|-------------------------------|
| <i>In re</i> I.S.-N., |) | Appeal from the Circuit Court |
| |) | of the 10th Judicial Circuit, |
| a Minor |) | Peoria County, Illinois, |
| |) | |
| (The People of the State of Illinois, |) | |
| |) | |
| Petitioner-Appellee, |) | Appeal No. 3-11-0354 |
| |) | Circuit No. 08-JA-235 |
| v. |) | |
| |) | |
| M.S., |) | Honorable |
| |) | Chris L. Fredericksen, |
| Respondent-Appellant). |) | Judge, Presiding. |

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not manifestly err by finding the respondent to be an unfit parent. Counseling records during the applicable nine-month period showed that, due to the respondent's limited cognitive abilities, she lacked good judgment and the ability to protect herself. She also regularly engaged in self-abusive behaviors when she became frustrated or angry.
- ¶ 2 The trial court entered orders finding the respondent, M.S., to be an unfit parent and

terminating her rights to the minor, I.S-N. On appeal, the respondent argues that there was insufficient evidence to find that she was an unfit parent. We affirm.

¶ 3

FACTS

¶ 4

On November 25, 2008, the State filed a juvenile petition alleging that the minor, who was born on November 21, 2008, was neglected by reason of an injurious environment. The petition alleged in part that: (1) the respondent was previously found unfit in case Nos. 06-JA-74 and 07-JA-197 and there had been no subsequent finding of fitness; (2) the minor's father had a criminal history, which included burglary in 1999 and violating an order of protection in 2008; (3) the respondent took out an order of protection in 2008 against the minor's father, which she later dropped; (4) the respondent continued to reside with the minor's father; and (5) the respondent had previously been indicated by the Department of Children and Family Services (DCFS) on March 22, 2006, and July 24, 2007, for substantial risk of harm.

¶ 5

In preparation for the dispositional hearing, Counseling and Family Services (CFS) prepared a report and subsequent addendum. The report indicated that the respondent was diagnosed with phonological disorder, features of posttraumatic stress disorder, borderline intellectual functioning, borderline personality features, masochistic personality features, narcolepsy, and epilepsy. Also attached to the addendum was the respondent's counseling progress report, which was prepared on December 19, 2008, for the respondent's other juvenile cases. The progress report stated that the respondent's counseling goals were for her to "demonstrate an understanding of, as well as following through with, ways in her daily life to keep herself and her children safe, and learn, apply, and manage her issues regarding

anger, frustration, and self-abusive behaviors in her daily life." The report indicated that the respondent bit herself as a means of relieving frustration and anger, and it suggested that the respondent's progress was limited due to her cognitive disabilities.

¶ 6 At the dispositional hearing the trial court found the respondent unfit, made the minor a ward of the court, and appointed DCFS guardian of the minor with the right to place. On July 22, 2009, CFS reported that, although the respondent attended 24 counseling sessions, her progress continued to be minimal. The report noted several problematic areas including the respondent's: (1) lack of progress toward addressing her sexual abuse issues; (2) lack of progress toward demonstrating good judgment; (3) continued inability to make independent decisions; (4) lack of insight into keeping herself safe; and (5) limited thinking as to long-term effects of her parenting skills.

¶ 7 The report provided several specific examples of the respondent's problematic behavior. The respondent showed the clinician new bite marks she had made on her arm from frustration and anger. She also revealed that she had performed oral sex on a former paramour so that he would "leave [her] apartment." According to the report, she was "unable to recognize that the responsibility to assertively communicate to this male that she did not wish him in her apartment or did not wish to provide oral sex was hers."

¶ 8 In January 2010, CFS reported that two additional individuals were living with the respondent in the apartment she shared with the minor's father. The first was a man named Myron Arnold, who initially was only going to stay at the apartment temporarily. The respondent eventually had oral sex with Arnold "because he was feeling sad" and "did not want to leave." The report stated that the respondent "did not want to do this, but because

[Arnold] had been asking her for sex prior, she allowed him to perform this act on her."

¶ 9 The second houseguest was another DCFS-involved individual who was also considered unfit. This individual convinced the respondent to babysit small children with her so they could earn money. The respondent "admitted that she understood that she was not to babysit children, but minimized the situation by saying that she would not have hurt them."

¶ 10 The respondent further indicated that this houseguest had begun "bossing" her and the minor's father around. The respondent appeared unable to ask this person to leave, and she continued biting herself as a way of dealing with her frustration and anger. However, both houseguests had left by July 2010.

¶ 11 In April 2010, the respondent began counseling services with the Human Service Center. The respondent admitted to biting herself in two separate counseling sessions in April. The counseling notes for May 17, 2010, showed that the respondent "was poorly groomed and not dressed appropriately for the weather outside." On June 22, 2010, the respondent reported biting herself after her boyfriend wanted to surprise her with a dinner at Alexander's Steakhouse. The respondent also admitted to babysitting children in June and July of 2010.

¶ 12 On November 15, 2010, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent failed to make reasonable progress toward the return of the minor to her care during the nine-month period between October 7, 2009, and July 7, 2010.

¶ 13 At the outset of the hearing, the respondent's counseling records from CFS and the

Human Service Center were admitted into evidence. In addition, the respondent's caseworker for the relevant time period testified. The caseworker stated that the respondent was cooperative and regularly attended her scheduled visits with the minor. She also testified to matters contained in the January 2010 report: namely the oral sex incident with Arnold and the respondent's complaints that her second houseguest was "kind of running her home."

¶ 14 After hearing the evidence, the court found that, although the respondent had made reasonable efforts, she had not made reasonable progress toward the return of the minor to her care. The court stated that, "unfortunately based on her own inability, she cannot—she has not obtained a good judgment that is needed to raise a child." The court further found that she lacked the ability to protect herself, let alone a minor.

¶ 15 The matter proceeded to a best interest hearing, and the court found that it was in the best interest of the minor to terminate the respondent's parental rights. The respondent appealed.

¶ 16 ANALYSIS

¶ 17 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.

¶ 18 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). Whether a parent makes reasonable progress on the goal of reunification is a separate and distinct inquiry as to whether the parent exhibited reasonable efforts toward reunification, as reasonable efforts encompass a subjective determination of that particular parent's efforts. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). In contrast, the question of reasonable progress is an objective judgment, and at a minimum, requires a measurable or demonstrable movement toward reunification. *In re Janine M.A.*, 342 Ill. App. 3d 1041 (2003). A parent makes reasonable progress when her actions are of such quality that the minor can be returned to the parent in the near future. *In re A.P.*, 277 Ill. App. 3d 592 (1996).

¶ 19 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).

¶ 20 In the instant case, the State has not alleged that the respondent failed to exhibit reasonable efforts toward reunification with the minor. Rather, the State has alleged that the respondent failed to make reasonable progress toward the return home of the minor from October 7, 2009, to July 7, 2010.

¶ 21 The record shows that during the relevant time period, the respondent suffered from limited cognitive abilities. At the dispositional hearing, the evidence demonstrated that the respondent lacked good judgment, the ability to make good decisions, and insight into

keeping herself safe. This was exemplified by the fact that she felt she had to give oral sex to a former paramour in order to get him to leave her apartment. The respondent also regularly bit herself when feeling angry or frustrated.

¶ 22 During the relevant nine-month period, there was no evidence to suggest the respondent had made progress in these areas. While the respondent was no longer living with her two houseguests by the end of the reporting period, she demonstrated poor judgment by not evicting them when she first encountered problems with them. She also continued to babysit children despite the fact that she understood that she should not be watching them. Moreover, she allowed herself to be manipulated into giving oral sex to Arnold, which further indicated that she lacks the ability to protect herself. She was also unable to use any of the coping skills learned in counseling in order to stop biting herself. While we acknowledge that the respondent has limited abilities, the reasonable progress standard is an objective measurement. *Janine M.A.*, 342 Ill. App. 3d 1041. Based on this record, the respondent has not displayed progress or behavior such that the minor could be returned to her care in the near future.

¶ 23 The respondent argues that the State presented insufficient evidence to find her unfit because there was a minimal amount of oral testimony presented at the hearing. However, she concedes that the State presented a voluminous amount of documentary evidence. The respondent's progress reports alone from CFS and the Human Service Center demonstrate by clear and convincing evidence that she had made minimal progress since October 7, 2009. Therefore, we conclude that the court did not manifestly err when it adjudicated the respondent an unfit parent for failing to make reasonable progress.

¶ 24

CONCLUSION

¶ 25

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

¶ 26

Affirmed.