2011 IL App (3d) 110441-U

Order filed September 28, 2011

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2011

In re M.M. and I.S-N.,	) 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. 3-11-0441
	) Circuit Nos. 07-JA-82 and 08-JA-235
v.	)
	)
J.H.N.,	) Honorable
	) Chris L. Fredericksen,
Respondent-Appellant).	) Judge, Presiding.

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

ORDER

¶ 1 *Held:* The trial court's fitness determination was not against the manifest weight of the evidence where: (1) the respondent was unable to effectively meet his son's needs; (2) psychological assessments expressed doubt about his ability to parent due to his limited cognitive abilities; and (3) the respondent showed poor judgment by allowing unauthorized houseguests to live with him.

¶ 2 The trial court entered orders finding the respondent, J.H.N., to be an unfit parent

and terminating his rights to the minors, M.M. and I.S-N. On appeal, the respondent argues that the trial court manifestly erred by finding that he was an unfit parent. We affirm.

¶ 3 FACTS

¶ 4 The respondent is the father to both minors by two different mothers. Consequently, although some of the issues overlap, we find it useful to address each minor separately.

¶ 5 I. M.M.

¶ 6 M.M. came to the attention of the Department of Children and Family Services (DCFS) after his younger brother, G.M., was hospitalized after sustaining fractures consistent with abuse. Prior to DCFS involvement, the respondent had only seen M.M. on one occasion. M.M. and his brother were initially placed in the home of a relative, but were moved to a regular foster home on April 10, 2007, at the request of the relative foster parents. M.M. was approximately four years old at the time of placement.

¶ 7 The dispositional hearing took place on July 27, 2007. At the hearing, the respondent was found dispositionally fit, M.M. was made a ward of the court, and DCFS was named as guardian with the right to place. The respondent was ordered to: (1) submit to psychological examination; (2) participate and successfully complete counseling; (3) obtain and maintain stable housing; and (4) visit with M.M. The respondent completed a psychological evaluation from Antioch Group in September 2007.

¶ 8 At a subsequent permanency review hearing, the respondent was ordered to learn

sign language so that he could communicate with M.M., who was diagnosed with several disorders including autism, brain damage, and being nonverbal (mute). On July 8, 2009, the respondent was found unfit based on his other case with I.S-N. At that same hearing, the respondent was found to have made mixed efforts toward reunification with M.M. due to the fact that he had not learned sign language. On October 10, 2009, the respondent began attending a sign language course called Mommy and Me. The respondent "actively participated and appeared to grasp the concepts of sign language." The respondent also participated in these classes with M.M. At the permanency review hearing on January 6, 2010, the court noted that the respondent was making reasonable efforts.

¶ 9 In preparation for the May 5, 2010, permanency review hearing, Lutheran Social Services prepared a report detailing the respondent's progress. The report noted that since the respondent began attending sign language classes, he appeared "to still be struggling with understanding [M.M.'s] needs during visitation." In addition, the respondent "completed sign language classes however [he] is not using sign language during visitation and still does not understand [M.M.] when he signs."

¶ 10 An addendum attached to the report included the respondent's counseling report from June 17 to December 14, 2009. The counseling report demonstrated that the respondent completed the majority of his treatment goals, had been compliant about attending counseling, and had been generally appropriate. The report also revealed that the respondent did not think he was capable of parenting M.M. and that he was "baffled by his son's behavior and ha[d] little idea how to respond." The reporter opined that the

respondent had reached the limit of his ability to parent.

¶ 11 At the May 5, 2010, permanency review hearing, the goal was changed to substitute care pending the court's decision for termination of parental rights. The respondent was subsequently discharged from counseling on May 19, 2010. The discharge summary noted that the respondent had made progress in controlling his impulsive behavior, but he could not completely understand M.M.'s needs due to his "limited cognitive abilities."

¶ 12 II. I.S-N.

¶ 13 On November 25, 2008, the State filed a juvenile petition alleging that I.S-N., who was born on November 21, 2008, was neglected by reason of an injurious environment. The petition was based, in part, on the fact that both parents had ongoing cases with DCFS. A report prepared by Counseling and Family Services (CFS) for the dispositional hearing stated "[b]oth parents have been identified as intellectually challenged and not at capacity to parent." 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. The respondent's goals with I.S-N. were the same goals that he had with M.M.

¶ 14 At a permanency review hearing on August 5, 2009, the court ordered a new psychological evaluation for the respondent. The court also stated that "although parents are making reasonable efforts, neither of them is making much progress." The evaluation, which took place on November 18, 2009, noted that the respondent had low levels of achievement on the test based on a low level of ability. The testing psychologist

opined that the respondent "[did] not find his relationship with his children to be rewarding to his sense of himself as a parent." In addition, the respondent had "significant intellectual and cognitive limitations, as well as significant social and emotional functioning limitations, that [were] likely to preclude his ability to become a father who is able to consistently, day after day, provide a safe, stable, secure, appropriate and nurturing parenting experience for his children."

¶ 15 CFS prepared a report in January 2010 detailing the respondent's progress. The report demonstrated that the respondent lived in a clean and appropriately furnished apartment with I.S-N.'s mother, but two additional houseguests lived in the apartment as well. One of the houseguests was another individual who was involved in DCFS litigation, although both houseguests had left the residence by July 2010. After the permanency review hearing on January 27, 2010, the goal was changed to substitute care pending the court's decision for termination of parental rights.

¶ 16 III. Termination of Parental Rights

¶ 17 On November 15, 2010, the State filed a petition for termination of parental rights in both cases. In M.M.'s case, the petition alleged that the respondent had failed to make reasonable progress toward the return of the minor between August 20, 2009, and May 20, 2010. The second petition initially alleged that the respondent had failed to make reasonable progress toward the return of I.S-N. during the same period of time; however, the petition was later amended to the nine-month period between October 7, 2009, to July 7, 2010.

¶ 18 The fitness hearing took place on March 30, 2011. M.M.'s foster mother testified

that M.M. had several medical conditions, including permanent brain damage. She stated that he was developmentally delayed, and that she had finally been able to potty train him at eight years old. She further stated he would not tolerate the textures of certain foods due to his sensory problems. At the time of the hearing, M.M. received occupational therapy, physical therapy, and speech therapy.

¶ 19 Jill Helms, I.S-N.'s caseworker since September 2010, testified that I.S-N. engaged in activities such as rocking and biting. She further testified that I.S-N. had a high pain tolerance, and did not feel hot from cold.

¶ 20 Cathryn Vissering testified that she had observed visits between the respondent and M.M. She testified to a November 4, 2009, visit where the respondent brought a small Transformer and an Iron Man activity book. Vissering stated that the respondent began playing with the Transformer, and M.M. started "grinding his teeth because he had nothing really to do[.]" M.M. ground his teeth for almost the whole hour.

¶ 21 Approximately a week later, the respondent had another visit with M.M., and M.M. started grinding his teeth as soon as the visit began. The respondent was able to distract him by playing music from his phone. The respondent was also able to talk quietly to M.M. to settle him down and stop him from grinding his teeth. However, at several subsequent visits, M.M. would communicate primarily in sign language, and the respondent would reply by speaking to M.M.

¶ 22 The respondent testified that he completed his sign language classes, and that he had been practicing sign language with I.S-N.'s mother. He also completed parenting classes. Moreover, the respondent explained that the reason M.M. ground his teeth at

visits was because "it's boring there. Ain't that much stuff to do except look at books."

¶ 23 The trial court delivered its decision on April 8, 2011, and found the respondent unfit to parent either child. In M.M.'s case, the court noted that the respondent attended most of the scheduled visits with his son, but he was unable to communicate with M.M. The court stated that he "could not internalize the education *** provided to him by these [sign language] classes because he could not use the sign language to effectively communicate." With regard to I.S-N., the court found that there was not sufficient evidence to find that she was a special needs child. Nonetheless, the respondent had not made reasonable progress toward I.S-N.'s return.

¶ 24 The court emphasized that "if this was a reasonable efforts case, I would have no problems using that subjective burden, using that burden to consider subjectively his efforts in this case. And he has made efforts as well. But this isn't a reasonable efforts case. It's a reasonable progress case." At the subsequent best interest hearing, the trial court found that it was in the best interest of both children that the respondent's parental rights be terminated. A formal order terminating parental rights was entered on June 2, 2011. The respondent appealed.

¶ 25 ANALYSIS

¶ 26 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.

¶ 27 A trial court will find a parent unfit when he fails to make reasonable progress toward the return of his 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 parent 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 his 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).

¶ 28 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).

¶ 29 We find that the trial court's fitness determinations were not against the manifest weight of the evidence. With regard to M.M., the evidence demonstrated that the respondent was ultimately unable to meet his son's needs. The respondent had difficulty incorporating what he learned from his sign language class into his visits with M.M. For example, M.M. would sign to the respondent, and the respondent would reply by

speaking to M.M. The documentation further demonstrated that the respondent himself was confused about his son's behaviors and did not feel confident that he could parent M.M.

¶ 30 The respondent points out that he had made some progress because he was able to calm M.M. down by playing music on his phone. While this is indeed significant, the trial court could reasonably find that this was not enough to prove that the respondent would be able to parent M.M. in the future. The foster mother testified to many of M.M.'s difficulties, and based on the evidence presented at the hearing, it was unlikely that the respondent would be able to adapt to M.M.'s demanding schedule. In fact, the respondent's discharge summary noted that, although the respondent had made progress controlling his impulsive behaviors, he had reached the end of his ability to parent.

¶ 31 Regarding I.S-N., the respondent completed a psychological evaluation during the relevant nine-month period that expressed serious doubts about his ability to parent on a day-to-day basis. The respondent argues that the trial court relied too heavily on psychological evaluations to find him unfit; however, the trial court was permitted to weigh the evidence as it deemed appropriate, and we will not reweigh the evidence on review. See *In re T.Y.*, 334 Ill. App. 3d 894 (2002) (holding that psychological assessment was sufficient evidence to show that mother was unfit parent).

¶ 32 Moreover, the evidence further demonstrated that the respondent exercised poor judgment by allowing two additional houseguests, one who was also involved with DCFS litigation, to live with him and I.S-N.'s mother. The respondent argues on appeal that he did not report the woman because he thought that DCFS was already aware of the living

arrangement. Nonetheless, even if true, this argument does not address the fact that it was poor judgment on the respondent's part to allow her to live with him in the first place. Based on the above, the trial court's finding was not against the manifest weight of the evidence.

¶ 33 As a final matter, it should be noted that the respondent argues that he was at a disadvantage due to inadequate services. Although it is true that both psychological evaluations recommended more therapy for the respondent than he received, "[t]here must be some limit to the extent of the State's obligation." *In re P.M.*, 221 Ill. App. 3d 93, 95 (1991). Moreover, the larger issue for the respondent was that he struggled to incorporate the counseling that was provided into his everyday life. For example, when the respondent was unable to attend adult sign language classes due to his cognitive challenges, DCFS enrolled him in the more appropriate Mommy and Me class. However, the respondent was ultimately unable to communicate with M.M. in sign language. It is therefore questionable whether the respondent would have benefited from any additional services.

¶ 34 CONCLUSION

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

¶ 36 Affirmed.