

NOTICE

This order was filed under Supreme Court Rule 23 and may not be cited as precedent by any party except in the limited circumstances allowed under Rule 23(e)(1).

NO. 4-10-0935

Order Filed 3/16/11

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.H., a Minor,) Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,) Circuit Court of
Petitioner-Appellee,) Champaign County
v.) No. 09JA5
STEPHEN PETTY,)
Respondent-Appellant.) Honorable
) Richard P. Klaus,
) Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.

Justices Turner and Pope concurred in the judgment.

ORDER

Held: The circuit court's conclusion respondent father, an inmate in the Department of Corrections, failed to make reasonable progress toward the return of his son within the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)) was not against the manifest weight of the evidence.

Respondent father, Stephen Petty, appeals the orders of the Champaign County circuit court finding him an unfit parent and terminating his parental rights to T.H. (born January 26, 1995). Petty argues the finding of unfitness is against the manifest weight of the evidence and the court erroneously considered evidence of events that occurred outside the relevant statutory period. We affirm.

I. BACKGROUND

In January 2009, the State filed a petition for adjudication of neglect and shelter care on behalf of T.H. and two of his half-siblings, J.D. and T.D. Respondent mother, Shellie Hardin, is the biological mother of the three children. J.D.'s

and T.D.'s putative father is identified as Tad Donahue. Hardin, Donahue, J.D., and T.D. are not involved in this appeal.

According to the State's petition, T.H. was neglected in that he was in an environment injurious to his welfare when he resided with his mother and Donahue, in that the environment exposed him to domestic violence (705 ILCS 405/2-3(1)(b) (West 2008)). In March 2009, upon a stipulation by Donahue and Hardin, the circuit court found T.H. neglected. Petty waived hearing on the State's petition. In the later April 2009 dispositional order, the court noted Petty had been incarcerated in the Department of Corrections since 2000 and his earliest projected parole was in 2014.

In January 2010, the State petitioned for the termination of Petty's, Hardin's, and Donahue's parental rights. The State alleged two counts of parental unfitness against Petty: Petty was an unfit parent in that he (1) failed to make reasonable progress toward the return of T.H. within 9 months after the adjudication of neglect and abuse (750 ILCS 50/1(D)(m)(ii) (West 2008)) and (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to T.H.'s welfare (750 ILCS 50/1(D)(b) (West 2008)).

In May and June 2010, a hearing was held on the State's petition. Shelly Roderick testified she had been a foster-care case manager with Catholic Charities and, in that capacity, worked with Hardin and her family. When Roderick began working on this case, Petty was residing in the Danville Correctional Cen-

ter. Roderick testified he resided there during the nine-month period of March 5, 2009, through December 5, 2009. Roderick visited Petty. During a visit in July 2009, Petty informed her he believed he had approximately five years remaining on his sentence. He hoped to be released earlier on good-time credit.

Based on Roderick's identification and testimony, the circuit court entered petitioner's exhibit Nos. 6 and 7 into evidence. Petitioner's exhibit No. 6 is a service plan Roderick prepared in July 2009. Petitioner's exhibit No. 7 is a service plan, also prepared by Roderick, dated January 2010.

On the second day of the hearing on the State's petition, the State began by moving to withdraw the count alleging Petty failed to maintain a reasonable degree of interest, concern, or responsibility as to T.H.'s welfare. Upon granting the motion, the circuit court observed "the remainder of the hearings would be aimed at count 1, which is reasonable progress during the initial nine months of adjudication."

Petty testified on his own behalf. Petty testified he resided in the Danville Correctional Center since 2000. Petty testified his anticipated release was in approximately three years "or just a little more." When asked if he earned good-time credit while serving there, Petty responded "next year I will."

Petty testified while imprisoned he attended and successfully completed a parenting class called "Inside-Out Dad." When asked if he attended and completed an anger-management seminar in February 2010, the guardian *ad litem* objected on grounds

it was outside the scope of the pleadings. The circuit court sustained the objection. Petty testified he attempted to remain current with the caseworker on the case.

When Petty sought to introduce into evidence the certificate of completion for the "Inside-Out Dad" course, the State and guardian *ad litem* objected as outside the scope of the pleadings. The circuit court admitted the certificate into evidence, holding it appeared Petty may have been in the class during the relevant period.

At the close of the hearing, the circuit court found Petty had "been proven by clear and convincing evidence to be an unfit parent *** for the reasons set forth in the written order." In the written order, the court stated, as to Petty, the following:

"Stephen Petty has been proven by clear and convincing evidence to be an unfit person and parent within the meaning of section 1 of the Illinois Adoption Act because:

Respondent father has been incarcerated during the entire life of this case and remains incarcerated and has a projected parole date of 2014. Respondent father has been incarcerated during the vast majority of the respondent minor's life."

In November 2010, the circuit court terminated Petty's parental rights to T.H.

This appeal followed.

II. ANALYSIS

Petty first argues the circuit court erred in finding he failed to make reasonable progress and thus in finding him an unfit parent.

A circuit court may find a parent unfit when the evidence clearly and convincingly shows one of a number of circumstances, including, as alleged here, that the parent failed to make reasonable progress toward the return of the child within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2008)). Because the circuit court is in the superior position for viewing witnesses and their demeanor at trial, we will give great deference to a circuit court's findings and will not overturn a finding of unfitness unless it is against the manifest weight of the evidence. *In re A.P.*, 277 Ill. App. 3d 592, 598, 660 N.E.2d 1006, 1010 (1996).

When a circuit court considers a claim of a lack of reasonable progress, that court must undertake "an objective review of the steps the parent [took] toward the goal of reunification." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004) (quoting *In re B.S.*, 317 Ill. App. 3d 650, 658, 740 N.E.2d 404, 411 (2000), *overruled on other grounds* by *In re R.C.*, 195 Ill. 2d 291, 304, 745 N.E.2d 1233, 1241 (2001)). Reasonable progress will be found only if a court finds it may in the near future return the child to the custody of the parent because that parent will have complied fully with the court's

directives. See *Jordan V.*, 347 Ill. App. 3d at 1068, 808 N.E.2d at 605.

In this case, the relevant nine-month period spanned March 5 to December 5, 2009. During this period, the testimony establishes Petty was serving a sentence that had an anticipated release date after T.H.'s eighteenth birthday. Petty had not yet received good-conduct credit against his sentence, although he anticipated earning credit in the future. The evidence shows Petty participated and completed a parenting class and had satisfactorily met the service-plan goals.

Petty maintains these facts establish the circuit court's order was against the manifest weight of the evidence. Petty, relying on *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006), argues the benchmark for evaluating evidence regarding progress is measured by the parent's compliance with the service plan created by the caseworker. Petty maintains two exhibits show his progress was rated satisfactory and thus his progress was reasonable. Petty also highlights his completion of the parenting class.

We agree a parent's compliance with service plans is relevant and material, but the circuit court's consideration of what progress is reasonable is not limited to only a parent's compliance with service plans. In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), our supreme court held a parent's compliance must be considered in light of other conditions, including those that would prevent the court from return-

ing the child to a parent's custody:

"[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses 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, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent."

In this case, while his progress was rated "satisfactory," the goals of the service plan were set for an inmate who was serving a sentence that would not be complete for over three years--after his child would reach the age of majority. For example, as shown in petitioner's exhibit No. 6, the goals for Petty included "[a]grees to participate in any available education, employment, treatment or training programs"; "[a]grees to include name and address of children, case worker and visitation providers on a visiting list to prison officials"; and "[a]grees to send all cards and correspondence to Catholic Charities." As for the first goal, the narrative provided regarding this goal is that "Petty reports that he [has] taken courses to gain employable income once released from prison." Regarding the others, the notes indicate he has complied and he has maintained correspondence with T.H.

Here, despite the satisfactory completion of these goals, no interpretation of the evidence leads to a conclusion Petty meets the objective standard of having made reasonable progress. The test requires a finding Petty, "in the near future," would be able to parent T.H. See *Jordan V.*, 347 Ill. App. 3d at 1068, 808 N.E.2d at 605. The testimony shows during the relevant nine-month period, Petty was serving a sentence that would not be complete until T.H. is over 18. The circuit court's finding is not against the manifest weight of the evidence.

Petty also argues the circuit court improperly considered evidence outside the relevant nine-month period while denying him the opportunity to present evidence of events occurring outside the nine-month period. Petty points to the court's ruling and states the court considered "events right up to the date of the termination order *** and beyond."

"[S]ection 1(D) (m) of the Adoption Act limits the evidence that may be considered under the provision to matters concerning the parent's conduct in the [specified number of] months following the applicable adjudication of neglect ***." *In re D.L.*, 191 Ill. 2d 1, 10, 727 N.E.2d 990, 994 (2000). In this case, the State alleged Petty was unfit in that he failed to make reasonable progress within nine months of the adjudication of neglect as set forth in section 1(D) (m) (ii) of the Adoption Act (750 ILCS 50/1(D) (m) (ii) (West 2008)). Under *D.L.*, only evidence of Petty's conduct during the period of March 5, 2009, through December 5, 2009, was relevant.

Petty contends the circuit court violated *D.L.* Petty emphasizes the court's order, in which the court observed Petty had "been incarcerated during the entire life of this case" and "the vast majority of [T.H.'s] life," as well as Petty's "projected parole date of 2014."

We find no error. The circuit court was not considering evidence of Petty's conduct outside the nine-month period. Instead, the court's comments show consideration of the length of the sentence Petty was serving during the relevant nine-month period. Such consideration does not violate *D.L.*, but is consistent with the language in *C.N.*, which states a circuit court must measure a parent's progress by considering the parent's conduct "in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050. Petty's sentence was a condition properly considered when evaluating Petty's conduct and thus progress.

In making the previous argument, Petty also argues the circuit court erred by not permitting him to present evidence of his conduct after 2009, while considering the length of his sentence before and after the relevant period. As we have already held, the court's consideration of the length of Petty's incarceration time was proper under *C.N.* The exclusion of any evidence of Petty's conduct outside the nine-month period was proper under *D.L.* This argument fails.

Petty last contends the circuit court's procedures implicate constitutional concerns. Petty's argument is not clear. First, Petty maintains the court, violating principles of due process and equal protection, ignored the time span set forth in section 1(D)(m)(ii), while enforcing the time span in ruling against him. In addition, Petty closes with arguing the State made a failure-to-make-reasonable-progress claim, and the court considered issues not raised by either party.

Petty has neither developed these arguments nor cited any authority to support these claims. He has therefore forfeited his constitution-based arguments. Ill. S. Ct. R. 341(h)(-7) (eff. Sept. 1, 2006) ("Argument, which shall contain the contentions of the appellant and the reasons therefor, with citation of the authorities and the pages of the record relied on. *** Points not argued are waived ***").

III. CONCLUSION

For the reasons stated, we affirm the trial court's judgment.

Affirmed.