2012 IL App (1st) 112253-U

FIRST DIVISION
February 6, 2012

No. 1-11-2253

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IN THE APPELLATE COURT
OF ILLINOIS
FIRST JUDICIAL DISTRICT

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| IN THE INTEREST OF: | ) | Appeal from the |
| | ) | Circuit Court of |
| Darnell J. and Devon J., | ) | Cook County |
| Minors-Respondents-Appellees, | ) | |
| | ) | No. 08 JA 006-007 |
| (THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| Petitioner-Appellee, | ) | Honorable Rena Marie |
| | ) | Van Tine, |
| v. | ) | Judge Presiding. |
| | ) | |
| Danyell J., | ) | |
| Father-Respondent-Appellant). | ) | |

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JUSTICE KARNEZIS delivered the judgment of the court.
Presiding Justice Hoffman and Justice Rochford concurred in the judgment.

ORDER

¶ *1* *HELD:* The circuit court did not err in finding respondent an unfit parent and in finding it was in the children's best interests to terminate respondent's parental rights where respondent had tested positive for drugs several times and had not made substantial progress in recommended services.

¶ 2 Following an evidentiary hearing, the circuit court of Cook County found that respondent Danyell J. was an "unfit" parent pursuant to section 1(D)(b) and (m) of the Adoption Act (750 ILCS 50/1(D)(b),(m) (West 2008)), because he failed to maintain a reasonable degree of interest, concern or responsibility as to his children Darnell J. and Devon J., and failed to make reasonable efforts to correct the conditions that were the basis for their removal or make reasonable progress towards their return home. The court subsequently terminated respondent's parental rights to Darnell and Devon pursuant to section 2-29(2) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-29(2) (West 2008)). Respondent appeals from the court's order and contends on appeal that the court erred by: (1) finding respondent unfit; and (2) terminating respondent's parental rights. For the following reasons, we affirm.

¶ 3 Background

¶ 4 Respondent's parental rights were terminated on July 29, 2011, as to his two children, Darnell, born on October 30, 2000, and Devon, born on March 24, 2004. The children's mother consented to the children's adoption and is not a party to this appeal.

¶ 5 The family came to the attention of the Department of Children and Family Services (DCFS) in January 2008 when the children's brother, 14-month old Joshua, was rushed to the hospital after being found unresponsive at home. Joshua, who is not respondent's biological child, died the next day of meningococcemia, an infection of the bloodstream. Joshua tested positive for cocaine while at the hospital and doctors believed that Joshua either ingested cocaine or was in close proximity to persons who

were smoking cocaine within the last few hours before his death.

¶ 6 The family also had prior involvement with DCFS. In 2004, Devon tested positive for cocaine at his birth and DCFS opened an intact family case, which was subsequently closed in 2005. In 2006, Joshua was born substance exposed and DCFS opened another intact family case. Joshua's mother gave Joshua to respondent to care for and DCFS closed the case in 2007 when the mother refused to cooperate with DCFS caseworkers. In November 2007, the family again became involved with DCFS when respondent brought Darnell and Joshua to the hospital, and hospital staff observed respondent pulling Joshua roughly by his arm. Staff members also noted that Darnell smelled of urine and had been diagnosed with bi-polar disorder, but respondent did not allow him to be evaluated at the hospital. In January 2008, shortly after Joshua died, DCFS took protective custody of Darnell and Devon.

¶ 7 On January 8, 2008, the State filed motions for temporary custody and petitions for adjudication of wardship for Darnell and Devon, alleging that the children were neglected due to an injurious environment and abused due to substantial risk of physical injury, pursuant to the Juvenile Court Act (705 ILCS 405/2-3(1)(b) and 405/2-3(2)(ii) (West 2008)).

¶ 8 The trial court held an adjudicatory hearing on September 9, 2008, finding both children abused and neglected pursuant to the grounds alleged by the State. The court also found Devon neglected due to being born drug exposed pursuant to section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West 2008)).

¶ 9 The trial court held a dispositional hearing on October 9, 2008, and placed both children under DCFS guardianship, finding respondent unable and unfit to care for them. Also on that date, the court entered a permanency goal of "return home pending status hearing" for both children finding that respondent had not made substantial progress and needed to "meaningfully engage in substance abuse treatment."

¶ 10 The trial court held a permanency hearing on May 26, 2009, again entering permanency goals of return home pending status hearing, noting that respondent had not made substantial progress. Subsequently, on September 8, 2009, and June 15, 2010, the court entered permanency goals of termination of parental rights, finding that respondent had not made substantial progress.

¶ 11 A termination hearing began on November 5, 2010. The first part of the hearing concerned whether respondent was an unfit parent pursuant to section 1(D)(b) and (m) of the Adoption Act (750 ILCS 50/1(D)(b), (m) (West 2008)). The court began the hearing by taking judicial notice of the prior orders and reports that were in the record.

¶ 12 Caseworker Denise Rogers testified that she had been assigned to respondent's family's case and stated the following. Respondent was assessed by her agency for drug treatment, mental health services, parenting classes, parental judgment and individual therapy, in order to make progress towards reunification with his children. The agency received a TASC treatment report, dated October 2008, that recommended respondent re-enter drug treatment due to respondent testing positive for drugs on numerous occasions. Respondent was rated unsatisfactory on the January 2009

administrative case review and service plan. At the end of January 2009, respondent entered a drug treatment program, which he completed in May 2009. However, respondent's TASC recovery coach reported in May 2009 that he had a minimal understanding of the disease of addiction and she recommended follow-up aftercare in the form of a 12-step program. Rogers met with respondent at his home on April 14, 2009, and asked him about his cocaine use. Respondent told Rogers that he used cocaine once a week, but that marijuana was his drug of choice. Respondent also indicated that he did not think his drug use was a problem.

¶ 13 Rogers stated that respondent received an unsatisfactory rating on the May 2009 administrative case review and had not made substantial progress. She classified respondent's progress as satisfactory because he was participating in individual therapy, parenting classes and some services but his progress was not substantial. A February 2009 report indicated that respondent's continued drug use was a concern, as well as his co-dependent relationship with the children's mother. In May 2009, respondent was not discharged successfully from completing parenting coaching because of respondent's drug use and because he was living with the mother, who was not in substance abuse treatment. In June 2009, respondent still had not made substantial progress. Rogers told respondent several times that his continued relationship with the mother threatened his parental rights.

¶ 14 Rogers further stated that respondent attended visits with his children and even asked for longer and more frequent visits. Respondent's interaction with the children

was appropriate. On some of the visits they would go to parks, respondent would cook for them or buy them food, would ask how they were doing in school, and play video games with them. Respondent also brought the children presents or gave them money.

¶ 15 Social worker Yolanda Orange-Berry testified that she was assigned to respondent's family's case since August 2009. In September 2009, the permanency goal was changed to termination of parental rights. In October 2009, she provided respondent with information regarding community-based service providers so respondent could attend individual counseling and substance abuse and anger management counseling however, respondent never provided her with any documentation that he completed any of those services. She further stated that since she had been assigned to the case, she had been at respondent's home about eight times to observe a visitation, and the children's mother had been there about four of those times. Orange-Berry discussed with respondent several times about ending his relationship with the children's mother in order to work towards reunification with his children. She also stated that she never recommended unsupervised visits with the children because respondent was not making substantial progress in services.

¶ 16 Orange-Berry additionally testified that respondent participated in all the visits the agency scheduled with his children and repeatedly asked to see his children more often. When respondent saw his children, he would hug and kiss them and he had a bond with them.

¶ 17 Respondent testified at the hearing and admitted that on March 21, 2011, a

domestic violence order of protection was entered against him on the mother's behalf.

¶ 18 At the conclusion of the unfitness part of the hearing, the court found that the State had met its burden of proof on both counts alleged in the petition. The court noted that although respondent regularly visited his children and sought additional visits with them, respondent tested positive for cocaine several times, had codependency issues with the children's mother and had never progressed in services to the point of having unsupervised visits with the children.

¶ 19 The court then proceeded to a best interest determination. Orange-Berry testified regarding the children's current placement with the foster parent, the children's maternal aunt. She stated that both Darnell and Devon have a positive relationship with their aunt. The children display signs of affection and positive family interactions with her. The children's two younger siblings also live with the aunt and all four children get along well. Orange-Berry characterized the aunt's parenting of all four children as strong, nurturing, directive, loving, and understanding. The children also have an opportunity to interact with extended family members who live nearby and they all attend church together. The aunt also takes care of Darnell and Devon's special needs such as individual counseling, medications, and help for their learning disabilities. Orange-Berry further stated that the children's aunt was rated satisfactory on her ability to provide services to the children. She believes that termination of parental rights is in the children's best interests because they are thriving in the aunt's home.

¶ 20 The children's aunt, Lashana Antoinette Andrews Nezbit, testified that she wants

to adopt Darnell and Devon because they are family and have been living with her for three years and she cannot imagine her life without them. She further stated that she would allow the children to continue visits with their father if she were able to adopt them.

¶ 21 The court stated that it was determining the best interest factors as set forth in the Juvenile Court Act and determined that it was in the best interests of the children to terminate respondent's parental rights. The court found that the children's aunt had been providing the children with food, shelter and clothing and had been responsible for the children's physical safety and welfare for the past two and one-half years, and the children were doing well in her care. The court noted that respondent had not been successful in correcting the conditions that brought the case into the system and the mother had recently obtained a domestic violence order of protection against him. The court added that the aunt's home provided the children with a safe environment where they could have regular visits with respondent as well as other family members.

¶ 22 Analysis

¶ 23 Respondent now appeals from the court's order finding him unfit and terminating his parental rights. Pursuant to the Juvenile Court Act, the involuntary termination of parental rights involves a two-step process. First, there must be a showing, based on clear and convincing evidence, that the parent is "unfit," as defined in section 1(D) of the Adoption Act. If the court makes a finding of unfitness, the court then considers whether it is in the best interests of the child that parental rights be terminated pursuant

to section 2-29 of the Juvenile Court Act. *In re C.W. v. Rosanna W.*, 199 Ill. 2d 198, 210 (2002).

¶ 24 Trial Court's Unfit Finding

¶ 25 Respondent contends on appeal that the trial court erred when it found him unfit on the basis that respondent failed to maintain a reasonable degree of interest, concern or responsibility for his children (750 ILCS 50/1(D)(b) (West 2008)) and failed to make reasonable efforts to correct the conditions that were the basis for their removal or make reasonable progress towards their return home (750 ILCS 50/1(D)(m) (West 2008)).

¶ 26 We first consider respondent's contention that the trial court erred by finding that he failed to maintain a reasonable degree of interest, concern or responsibility for his children. Respondent maintains that the court's finding is belied by the testimony that he attended every visitation offered to him; he objected when a visit was cancelled or if the children arrived late; he visited the children as often as possible, which many times was more than once a week; he played with them appropriately; and, he cooked for them at times.

¶ 27 Section 1(D) of the Adoption Act enumerates numerous grounds for finding a parent "unfit." Any one ground, properly proven, is sufficient to enter a finding of unfitness. *In re C.W.*, 199 Ill. 2d at 210. Relevant here is section 1(D)(b), which provides that a parent may be deemed unfit for "failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b)

(West 2008). Our standard of review in cases of parental unfitness is limited to determining whether the trial court's decision was against the manifest weight of the evidence. *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999).

¶ 28 Here, although the court noted that respondent did have regular visits with the children that were appropriate, the trial court found that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the children's welfare because respondent tested positive for cocaine several times, maintained a relationship with the children's mother even though she was not involved in any services, and respondent had not progressed in his services to the point of having unsupervised visits with the children. The court's finding is supported by the record and is not against the manifest weight of the evidence.

¶ 29 Respondent also contends that the trial court erred by finding that respondent failed to make reasonable efforts to correct the conditions that were the basis for their removal or make reasonable progress towards their return home. Respondent maintains that he completed parenting classes, attended parent coaching, was involved in individual therapy, and generally maintained a sober lifestyle with "occasional relapses."

¶ 30 Section 1(D)(m) of the Adoption Act, provides that a parent may be deemed unfit for failure:

> "(i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent, or

> (ii) to make reasonable progress toward the return of the child to the parent within 9 months after an adjudication of neglected or abused minor * * * or
>
> (iii) 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) (West 2008).

¶ 31 Here, the trial court found that respondent had not made reasonable efforts or progress because respondent continued to test positive for drugs and maintained an unhealthy relationship with the mother. Although the court heard testimony that respondent did complete parenting classes and was involved in some services, respondent had not progressed to the point of having unsupervised visits with the children. The court's finding that respondent had not made reasonable efforts or progress is not against the manifest weight of the evidence.

¶ 32 Trial Court's Best Interest Determination

¶ 33 Respondent next contends on appeal that the trial court erred in finding it was in the children's best interests to terminate his parental rights. Respondent maintains that the court ignored or minimized the long-term relationship and loving bond between respondent and the children. Respondent also relies on the testimony that showed he visited consistently with his children and that they often hugged each other during visits and the children became upset when the visits ended.

¶ 34 When the trial court finds that a parent is unfit, it must then determine whether termination of parental rights is in the best interests of the children. *In re Dominique W.*, 347 Ill. App. 3d at 568-569. In making this determination, the court considers the following factors: the physical safety and welfare of the child, including food, shelter, health, and clothing; the development of the child's identity; the child's background and ties, including familial, cultural, and religious; the child's sense of attachments, including where the child actually feels love, attachment, and a sense of being valued, the child's sense of security, the child's sense of familiarity, continuity of affection for the child, and, the least disruptive placement alternative for the child; the child's wishes and long-term goals; the child's community ties, including church, school, and friends; the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2008)). We consider whether the trial court's best interest determination was against the manifest weight of the evidence. *In re S.D.*, 2011 IL App (3rd) 110184, ¶ 33.

¶ 35 Here, the trial court determined it was in the children's best interests to terminate respondent's parental rights based on the testimony that the children's aunt was providing them with a safe and loving home where all their needs were being met, including the special educational and emotional needs of the children. The testimony at

the best interest hearing also indicated that the children have a loving, positive relationship with the aunt, they are involved in the local church and are able to frequently visit with their other family members. The trial court's determination to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 36 Accordingly, we affirm the judgment of the circuit court.

¶ 37 Affirmed.