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2012 IL App (3d) 110644-U

Order filed January 30, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD JUDICIAL DISTRICT

A.D., 2012

<i>In re</i> D.R., Jr.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minor,)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	Appeal No. 3-11-0644
Petitioner-Appellee,)	Circuit Nos. 09 JA 118
)	
v.)	
)	
Davon R.,)	Honorable
)	Chris Frederickson,
Respondent-Appellant).)	Judge Presiding.

JUSTICE WRIGHT delivered the judgment of the court.
Presiding Justice Schmidt and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held:* The court's findings that father was unfit and that it was in the best interests of the minor to terminate father's parental rights were not against the manifest weight of the evidence. Father did not successfully complete court-ordered required tasks before the child could be placed with him and had not bonded with the child. In addition, the child shared a close bond with the foster parent who wished to adopt the child.

¶ 2 On March 2, 2011, the State filed a “Petition for Termination of Parental Rights” on behalf of D.R., Jr. (D.R.) alleging both mother and father were unfit parents because neither had made reasonable progress toward correcting the conditions that led to the child being placed in foster care from March 9, 2010, to December 9, 2010. On June 29, 2011, the court found the State proved its unfitness allegations against father and, on August 3, 2011, found it was in the best interests of the child to terminate father’s parental rights and to allow the Department of Children and Family Services (DCFS) to consent to the child’s adoption.

¶ 3 Father appeals the court’s finding that the State proved that he was an unfit parent, and also the court’s finding that it was in the child’s best interest to terminate father’s parental rights. We affirm.

¶ 4 **BACKGROUND**

¶ 5 Respondent-appellant Davon R. is the father of D.R., born May 1, 2009. On May 5, 2009, the State filed a neglect petition alleging the child’s environment was injurious to his welfare because both parents had been previously found and remained dispositionally unfit to care for older children as determined by the court in a 2008 juvenile court proceeding. According to the 2009 petition, both parents had extensive criminal histories. The court entered a shelter care order on May 9, 2009, placing D.R. under the temporary care of DCFS.

¶ 6 On June 30, 2009, the court found that D.R. was neglected due to an injurious environment. The court also found father dispositionally unfit and ordered father to complete certain tasks to correct the conditions that lead to D.R. being placed with DCFS. The court ordered father to participate in and successfully complete individual counseling, a parenting course approved by DCFS; an anger management program; an educational program or, in lieu of

an educational program, use his best efforts to obtain and maintain employment. The court also ordered father to provide the caseworker with any change of address or phone number within three days; cooperate with supervised visits with the children; submit to a psychological and a psychiatric evaluation and follow the evaluator's recommendations for treatment.

¶ 7 On March 2, 2011, the State filed a petition for termination of parental rights, on behalf of D.R., requesting the court to terminate the parental rights of each parent for failing to make reasonable progress toward having D.R. returned to his or her care for a nine-month period from March 9, 2010, through December 9, 2010, pursuant to section 1(D)(m)(iii) of the Adoption Act. 750 ILCS 50/1(D)(m)(iii) (West 2010).

¶ 8 The court held an adjudicatory hearing on the petition to terminate parental rights on June 29, 2011. At this hearing, Caroline Taiwo, from Catholic Charities, testified that she was the family's caseworker from March 9, 2010, through December 9, 2010. Ms. Taiwo testified that she had no contact with father and father made no progress toward completing either a psychological or psychiatric examination, a parenting class, any individual counseling, an anger management program or any educational program during this time period. Ms. Taiwo also stated that, from March 9, 2010, through December 9, 2010, father did not contact her to set up any supervised visits with D.R.

¶ 9 Father testified that he was "locked up" during the period between March 9, 2010, until December 9, 2010, at the Department of Corrections (DOC) in Dixon, Illinois. He said he left prison "for approximately one month," but violated his parole and returned to DOC in Dixon. Father stated that he was released on parole the second time, in early December 2010, and was placed in a halfway house in Springfield. He testified that he attempted to "go to classes" when

he was “locked up,” but the DOC facilities did not offer parenting classes for him to attend. Father said that he did not attend anger management classes while in DOC because, although classes were available, he was not eligible for them because “there wasn’t nothing wrong with me.” Father testified that he was not able to cooperate with DCFS because he was “locked up during the time.” Father said he could not call the caseworker because he had no money to buy a phone card.

¶ 10 On cross examination, father agreed that he was released from DOC custody in April of 2010, and returned to DOC in late June of 2010, after committing the offense of aggravated assault on a police officer. Father stated that he was only “out for a couple of months” before he committed the new offense and was “on the run” during the time he was not incarcerated. Father said he had access to telephones during this period, but he did not have the telephone numbers to try to call the caseworker.

¶ 11 At the close of this hearing, the court found that, during the period from March 9, 2010, through December 9, 2010, father had been released from custody for over a two-month period but made no effort complete the court-ordered tasks or make any attempt to visit his child. The court also found that, during some of this period, father was incarcerated in the Peoria County jail, but did not seek to visit with his child through “a written form, telephonically, or ask the caseworker to set up some type of visitation.” The court noted that, although father had some hurdles due to the incarceration, father made “no efforts whatsoever to complete any of the services that the Court had ordered him to do especially with regard to visitation,” which is possible even when incarcerated.

¶ 12 The court then found the State had proven its petition “by clear and convincing evidence

that reasonable progress was not made.” The court set the case for a best interests hearing on August 3, 2011, and ordered DCFS to prepare a report for that hearing.

¶ 13 DCFS submitted a report, dated July 18, 2010, for that hearing. At the time of the report, D.R. was just over two years old and was residing in the same foster home where he had resided since May 5, 2009, a few days after his birth. The child’s foster mother was willing and able to provide for and adopt the child. According to the report, the child has bonded with his foster mother and father had not visited with the child since the child was two months old.

¶ 14 At the best interests hearing, on August 3, 2011, father testified the he was presently incarcerated in the Peoria County jail, and had been there for approximately eight months. Father said he was at the hospital when the child was born and spent time with D.R. while he was in the hospital. After the child was placed in foster care, on May 5, 2009, father said he visited with D.R. “two or five times” shortly after the child was released from the hospital. Father said he would “[s]tart changing my life” and stated that he would do “whatever it takes to keep my son safe.”

¶ 15 The court found that father had no bond with the child, had no contact with the child during the relevant nine-month period, and father admitted he did not visit his child because he was either incarcerated or “on the run” during the nine-month period. The court found the child was living in a very safe and secure environment with a foster mother who could provide permanency and shared an obvious bond with the child. Based on all of the evidence, the court found that it was in the best interests of the minor to terminate father’s parental rights, and named DCFS as the guardian of D.R. with the power to consent to the child’s adoption.

¶ 16 Father filed a timely appeal challenging the trial court’s finding of unfitness and the

termination of his parental rights.

¶ 17

ANALYSIS

¶ 18 On appeal, father challenge the court's finding of unfitness, as well as the court's finding that it was in the child's best interests to terminate father's parental rights and allow DCFS to consent to adoption. The State contends that both findings by the court were not against the manifest weight of the evidence.

¶ 19 Proceedings on a petition for termination of parental rights involve a two-step, bifurcated approach where the court first holds an "unfitness hearing" (705 ILCS 405/2-29 (West 2000); 750 ILCS 50/1(D) (West 2010)) and, if the parent is found unfit, conducts a subsequent "best interests hearing." 705 ILCS 405/2-29(2) (West 2010); *In re D.T.*, 212 Ill. 2d 347, 352-53 (2004). In the instant case, father challenges both the court's finding of unfitness at the termination hearing and the finding that it was in the best interests of the child to terminate father's parental rights and allow DCFS to consent to adoption.

¶ 20

I. Father's Unfitness

¶ 21 During termination proceedings, the court must find that the State proved the parent's unfitness by clear and convincing evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). On review, the trial court's decision that a parent is unfit will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001).

¶ 22 In the instant case, the State's petition alleged that father was unfit, under the Adoption Act, because he failed to make reasonable progress, during the nine-month period from March 9, 2010, through December 9, 2010, in correcting the conditions that were the basis of the removal of the child from the parent's custody. 750 ILCS 50/1(D)(m)(iii) (West 2010). Whether a parent

makes reasonable progress toward the child's return to his or her custody is measured objectively by the amount of movement toward the goal of reunification. *In re D.J.S.*, 308 Ill. App. 3d 291, 294-95 (1999).

¶ 23 Our supreme court has held that the 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 re C.N.*, 196 Ill. 2d 181, 216-17 (2001). In the case at bar, the court entered a dispositional order following the hearing on June 30, 2009, listing several tasks father needed to complete before D.R. could be placed in his care. At the time the State filed the petition to terminate father's parental rights, on March 2, 2011, father had not attempted to begin any of these court-ordered tasks, making no progress toward completing of those tasks.

¶ 24 Our supreme court has held that a parent's incarceration, during any nine-month period alleged in a petition to terminate parental rights, does not excuse a parent's failure to make reasonable progress toward completion of his or her court-ordered tasks, nor does time spent in prison toll the nine-month period during which the parent must show reasonable progress. *In re J.L.*, 236 Ill. 2d 329, 343 (2010). The evidence shows that father did not even attempt to contact the caseworker or participate in any programs while incarcerated, as well as during the time father was released from custody when he had access to telephones but was "on the run."

¶ 25 Based on the evidence presented to the trial court, the trial court's finding that the State proved, by clear and convincing evidence, that father was unfit based on his failure to make

reasonable progress toward the completion of his court-ordered tasks was not against the manifest weight of the evidence.

¶ 26

II. Best Interests of the Child

¶ 27 After a finding of unfitness, the State must prove by a preponderance of the evidence that it is in the child's best interests to terminate the parental rights. *In re D.T.*, 212 Ill. 2d 347, 365-66 (2004). During the best interest hearing, the parent's interest in maintaining the parent-child relationship must yield to the child's interest to live in a stable, permanent, loving home. *D.T.*, 212 Ill. 2d at 364; *In re Allen*, 172 Ill. App. 3d 950, 959 (1988).

¶ 28 When determining the best interests of a child for purposes of a termination petition, the court is required to consider a number of statutory factors "in the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2008). On review, we will not reverse a trial court's finding that termination of a parent's rights is in the child's best interests unless it is against the manifest weight of the evidence. *In re E.M.*, 328 Ill. App. 3d 633, 640 (2002); *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). A trial court's decision is against the manifest weight of the evidence if the facts clearly demonstrate that the court should have reached the opposite result. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 29 Here, the record reveals that D.R. had been in foster placement for over two years, beginning when the hospital released him a few days after his birth, and had only a couple of visits with his father within two months after the child left the hospital. D.R. had been living with the same foster mother since his birth, had bonded with his foster mother, and the foster mother was able and willing to provide for the child and wished to adopt the child.

Consequently, the court determined that this foster mother was able to provide a sense of

permanence and stability for D.R.

¶ 30 Based on this information, the trial judge found that the State had established, by a preponderance of the evidence, that it was in the best interests of the child to terminate father's parental rights. After our careful review of the record, we conclude the trial court's finding regarding the child's best interests was not against the manifest weight of the evidence.

¶ 31 **CONCLUSION**

¶ 32 For the foregoing reasons, we affirm the decision of the trial court finding father unfit and terminating father's parental rights.

¶ 33 Affirmed.