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2012 IL App (3d) 110656-U

Order filed February 8, 2012

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT
A.D., 2012

<i>In re</i> K.H.,)	Appeal from the Circuit Court
a Minor.)	of the 12 th Judicial Circuit
)	Will County, Illinois.
(THE PEOPLE OF THE STATE)	
OF ILLINOIS,)	
)	Appeal No. 3-11-0656
Petitioner-Appellee,)	Circuit No. 05-JA-51
)	
v.)	
)	
TANYA F.,)	The Honorable
)	Paula Gamora,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE McDADE delivered the judgment of the court.
Presiding Justice Schmidt and Justice O'Brien concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court did not err when it found that the respondent was an unfit parent and terminated her parental rights to her minor daughter because the respondent had not visited the minor in almost four years; did not send cards, letters, or gifts, to the minor; and otherwise did not attempt to ascertain information about the minor or her well-being.
- ¶ 2 The trial court found that the respondent, Tanya F., was an unfit parent and terminated her

parental rights to K.H., her minor daughter. On appeal, the respondent argues that the trial court erred when it found that she was an unfit parent and terminated her parental rights. We affirm.

¶ 3

FACTS

¶ 4 The record shows that the respondent gave birth to K.H. on May 13, 2003, at which time the respondent was 17 years old. She and K.H.'s father, Raymond H., who was 19 years old at the time of K.H.'s birth, married before the respondent gave birth to K.H., but separated within one year.

¶ 5 On April 14, 2005, the State filed an adjudicatory petition alleging that K.H. was a neglected minor. The court subsequently found that K.H. was a neglected minor due to an injurious environment and noted that K.H. had "numerous unexplained bruises." At the February 21, 2006, dispositional hearing, the court found that the respondent was dispositionally unfit.

¶ 6 The State filed a petition to terminate the respondent's parental rights on February, 24, 2009. In this petition, the State alleged that the respondent was an unfit parent to K.H. because she failed to maintain a reasonable degree of interest, concern or responsibility for K.H.'s welfare; failed to make reasonable efforts to correct the conditions that were the basis for K.H.'s removal; and failed to make reasonable progress towards K.H.'s return home from the time period of January 31 to October 31, 2006. The State subsequently filed an amended petition, and amended the last allegation of unfitness to state that the respondent failed to make reasonable progress towards K.H.'s return home during the nine month period from January to September 2008.

¶ 7 Beginning in September 2010, the court conducted hearings on the State's petition. At these hearings, Jonathan Williams testified that he worked at One Hope United (the agency), and

that he had been the respondent's case manager since April 2, 2007. According to Williams, he drafted and evaluated the respondent's progress on four client service plans. Williams specifically testified that he first drafted a client service plan for the dates of October 2007 through April 2008. The respondent's tasks were to: (1) obtain appropriate and safe housing; (2) inform the agency of any change in her address to telephone number; (3) arrange weekly visits with K.H.; (4) attend parenting classes; (5) attend individual counseling and follow all recommendations; (6) maintain employment; and (7) obtain her general equivalency diploma (GED). As part of the task of finding appropriate housing, the respondent was specifically ordered to find housing separate from Chris Brei, her live-in boyfriend at the time K.H. received the unexplained bruises that formed the basis of the neglect finding. The respondent received an unsatisfactory rating for each of her tasks because she had no contact with the agency.

¶ 8 Williams also drafted a service plan for the time period of April 2008 through October 2008. During this time, the respondent received unsatisfactory ratings on all of her service plan tasks because she did not have any contact with the agency during that period.

¶ 9 Williams also drafted service plans for the time periods of October 2008 through April 2009 and April 2009 through October 2009. For these service plans, the respondent received a satisfactory rating for the task of completing a parenting class because she provided proof thereof in March 2009. Williams acknowledged that he had previously erroneously rated the respondent's progress on this task as unsatisfactory, even though the service plan stated that "[o]n 12-12-05, [the respondent] successfully completed parenting classes." During his testimony, Williams also acknowledged that he entered inaccurate information on a Department of Children and Family Services (DCFS) form when he reported that the respondent had been convicted of a

crime involving child abuse, drugs or violence, because she did not have such a conviction. He also acknowledged that he should have removed the task of obtaining housing separate from Chris Brei because Brei was not "indicated" for the harm to K.H.

¶ 10 Williams further explained that he first met the respondent in court on approximately April 2, 2007, and that he had seen her at most of the court hearings on this case during the 3½ years that he had been her case manager. However, Williams only saw the respondent outside of court one time. Specifically, in April or May 2009, the respondent came to his office to give him some documents pertaining to the case.

¶ 11 Williams also stated that during the time that he had been the respondent's case manager, the respondent did not have a single visit with K.H., and she never asked Williams if she could have a visit with K.H. The respondent further did not give any cards, gifts, or letters to Williams to pass along to K.H. Williams also did not believe that the respondent had sent any cards, gifts or letters to K.H. at the home of her foster parent, but acknowledged that he was not permitted to provide the respondent with the address of the foster parent. Nonetheless, according to Williams, during the time he had been the respondent's case manager, his office address and phone number remained the same, and the respondent was aware of this information.

¶ 12 The respondent testified that in September 2005 she had a meeting with her first case manager, at which time the case manager informed the respondent of the objectives she needed to achieve in order to secure the return home of K.H. The respondent attended other meetings of this sort in October 2005 and April 2006. The respondent acknowledged that when this case was initially referred to DCFS in 2005, and again at the subsequent meetings, she was directed to complete the aforementioned tasks to achieve the return home of her daughter. According to the

respondent, she completed a parenting class, she was employed, and she initially exercised weekly visitation with K.H. The respondent further stated that her case manager changed after the first six months. During this time, the respondent stated that she purchased a home and she notified the second case manager of her address.

¶ 13 The respondent explained that in December 2006 or January 2007, her visitation with K.H. "dropped off" because she got into a car accident and her car was totaled. According to the respondent, after the car accident, she kept her employment and attended all court hearings by obtaining a ride from others. However, she stated that she stopped visiting K.H. because she did not have access to public transportation and could not afford to purchase another car. She ultimately purchased a car in March or April 2010, but by this time she was not permitted to visit with K.H. because of the pending petition to terminate her parental rights. The respondent also stated that at the time she was in the car accident, she had a third case manager, and that this case manager "cut [her] visit times in half" because she did not have transportation. The respondent also stated that this case manager stopped taking phone calls from her and sending her update letters.

¶ 14 The respondent further stated that she met Williams, her fourth case manager, in court sometime around June 2007. According to the respondent, at that time, she provided Williams with her address and telephone number. The respondent acknowledged that she knew Williams' office address and telephone number. She also acknowledged that she had sent mail to Williams and received it from him. According to the respondent, she informed Williams of her place of employment and invited him to see her home. The respondent also stated that she had asked for a visit with K.H. at every court hearing. In response, Williams told her to call his office, and she

followed this direction. However, each time she would have to leave a voice mail message and Williams never returned her call. She acknowledged that she did not then follow up on these requests.

The respondent also testified that she recalled asking for a visit with K.H. at a court hearing on January 16, 2007, and that a visit was scheduled for the next day. The respondent stated that she did not remember that she did not attend this visit, and that she did not call to notify the agency of her absence. The respondent thus acknowledged that she had not visited K.H. since December 2006 or January 2007, and that since that time, she had sent no cards, letters or gifts to K.H., nor did she inquire how she could contact K.H. or send her a card or gift.

¶ 15 The respondent stated that although her service plan directed her to obtain a GED, she wanted a diploma, so she did not enroll in a GED program. She received her diploma sometime in the year prior to the termination hearings. The respondent also acknowledged that she knew that she was to go to counseling and the follow the recommendations of the counselor, but she did not. She explained that she had gone to some counseling sessions, but stopped because she could no longer afford it. One of her case managers informed the respondent that she could do counseling through DCFS, but the respondent did not receive any information and did not follow up on this alternative.

¶ 16 After taking the matter under advisement, the court found that the respondent was an unfit parent because she failed to maintain a reasonable degree of interest, concern or responsibility for K.H.'s welfare. In so finding, the court noted that the respondent attended every court hearing, perhaps with the exception of one, and also asked Williams for visits with K.H. while she was in court, but had not visited her daughter in almost four years.

¶ 17 The court conducted a best interest hearing on July 8, 2011. The evidence adduced at this hearing showed, among other things that K.H. was eight years old, and had lived with the same foster mother for six years. K.H. called her foster mother "[m]ommy[,]" and they had a very close relationship and loved each other. K.H.'s foster mother planned to adopt K.H. if she were made available for adoption. The respondent testified, and she stated that she still felt love and attachment to K.H. The court subsequently found that it was in K.H.'s best interest to terminate the respondent's parental rights. The respondent filed a motion to reconsider, which the trial court denied. The respondent appealed.

¶ 18 ANALYSIS

¶ 19 On appeal, the respondent first contends that the trial court erred when it found that she was an unfit parent. In support of this contention, the respondent asserts that Williams made inaccurate statements in his evaluations of the respondent, and was therefore incredible, and that her service plans did not require that she send cards, letters, or gifts to K.H. and no one informed the respondent that she could do so.

¶ 20 Here, the trial court held that the respondent was an unfit parent because she failed to maintain a reasonable degree of interest, concern or responsibility for the welfare of her daughter. 750 ILCS 50/1(D)(b) (West 2008). Since the language of this section is disjunctive, "any of these three elements may be considered on its own as a basis for unfitness: the failure to maintain a reasonable degree of interest *or* concern *or* responsibility as to the child's welfare." (Emphasis in original.) *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004).

¶ 21 When examining allegations under this section, the court must focus on the parent's reasonable efforts and not her success, and must also consider any circumstances that may have

made it difficult for her to visit, communicate with or otherwise show interest in his child. *Jaron Z.*, 348 Ill. App. 3d 239. If personal visits with the child were not practical, letters, calls, and gifts to the child or those caring for the child may show a reasonable degree of concern, interest or responsibility in the child's welfare, depending on the nature, tone, and frequency of the contacts under the circumstances. *In re C.A.P.*, 373 Ill. App. 3d 423 (2004).

¶ 22 A parent is not fit only because she has demonstrated some interest in the child; rather, the interest, concern and responsibility must be reasonable. *Jaron Z.*, 348 Ill. App. 3d 239. A parent's failure to comply with service plan tasks and infrequent or irregular visitation have both been deemed sufficient to support a finding of unfitness under this section. *Jaron Z.*, 348 Ill. App. 3d 239.

¶ 23 The question of reasonable progress is an objective judgment, and at a minimum, requires a measurable or demonstrable movement towards 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).

¶ 24 When multiple grounds of unfitness are alleged, a finding that any one ground has been proven is sufficient to declare the respondent unfit. *In re J.P.*, 261 Ill. App. 3d 165 (1994). On review, a trial court's finding of parental unfitness will not be reversed unless the finding is contrary to the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476 (2002). A determination is against the manifest weight of the evidence if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, or not based on the evidence presented. *D.F.*, 201 Ill. 2d 476.

¶ 25 The State must prove parental unfitness by clear and convincing evidence. *In re C.N.*,

196 Ill. 2d 181 (2001). We grant great deference to the trial court's finding of unfitness and will reverse that finding only if it is against the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985 (2004). A finding is against the manifest weight of the evidence when the record clearly supports the opposite result. *C.N.*, 196 Ill. 2d 181, 752 N.E.2d 1030.

¶ 26 After our careful review of the record, we conclude that the trial court's finding that the respondent was an unfit parent was not against the manifest weight of the evidence.

¶ 27 The record shows that at the time of the hearings on the State's termination petition, the respondent had not seen K.H. almost four years. The respondent acknowledged that during this time, she knew Williams' office telephone number and address, but she did not call Williams or go to his office to seek a visit with K.H. or at least inquire into her well-being. Such a lack of action does not show a reasonable degree of interest, concern or responsibility for K.H.'s welfare. Furthermore, although the respondent contended that she asked Williams for visits with K.H. during the times she saw Williams in court, and that Williams did not return her telephone calls, she acknowledged that she never followed through with these requests. Likewise, this action also does not indicate a reasonable degree of interest or concern for K.H.'s welfare.

¶ 28 Also, the record indicates that after the respondent got into a car accident in December 2006 or January 2007, she maintained employment and also attended nearly every court hearing. However, she did not attend one visit with her daughter. Furthermore, during this time, the respondent also did not attempt to call K.H., or to send K.H. any letters, cards or gifts. We do not believe that the respondent should have had to be ordered to attempt to communicate with her child given her alleged inability to personally visit her, as such communication in the context of her inability to personally visit K.H. may have sufficed to show a reasonable degree of interest,

concern or responsibility at to K.H.'s welfare. See *In re Syck*, 138 Ill. 2d 255 (1990) (mother maintained a reasonable degree of interest in her minor son by calling and mailing him during the times she could not personally visit him although neither DCFS nor the court ordered her to undergo such efforts at communicating with her son). In reaching this conclusion, we note that we do not fault the respondent because she did not have the money available to immediately purchase a new car. Nonetheless, given her financial constraints, any attempt to contact K.H. would have now aided her assertion that the court erred in finding her unfit. However, the record does not show such efforts.

¶ 29 We note the "inconsistencies" in Williams' reports; specifically, that the respondent completed a parenting class, obtained housing separate from Chris Brei, and also did not have a conviction for child abuse or drugs. We do not believe that these inconsistencies rendered the trial court's fitness determination against the manifest weight of the evidence because they do not touch on or excuse the respondent's failure to visit, or even inquire into K.H.'s well-being during the time Williams was the case manager. In so concluding, we also note that the record suggests that Williams exhibited little or no encouragement or support for the respondent. We understand that agencies like One Hope United are under difficult time and budgetary constraints. However, in the future, we believe that the relevant agencies should, at the barest minimum, make some efforts to contact the parents to whom they are responsible outside of scheduled court hearings. Nonetheless, the responsibility was on the instant respondent to demonstrate concern for or interest in the welfare of her child, notwithstanding what efforts the agency may or may not have made in engaging her in services and visitation.

¶ 30 Overall, because of the respondent's failure to visit her child for several years, and the

lack of any inquiry into K.H.'s well-being, we do not believe that the respondent has made a measurable or demonstrable movement towards reunification (see *Janine M.A.*, 342 Ill. App. 3d 1041), nor has she shown that her actions were of such quality that K.H. could be returned to her in the near future (See *A.P.*, 277 Ill. App. 3d 592). Consequently, the record does not show that the trial court's determination that she was an unfit parent was against the manifest weight of the evidence. Thus, we conclude that the trial court did not err in adjudicating that the respondent was an unfit parent for failing to maintain a reasonable degree of interest, concern or responsibility as to her daughter's welfare.

¶ 31 On appeal, the respondent also claims the trial court erred by finding that it was in K.H.'s best interest to terminate her parental rights. The respondent has failed to advance any argument supporting her claim of error regarding unfitness and failed to cite any law supporting her contention that the court erred by terminating her parental rights. The respondent has, thus, waived these arguments. Ill. Sup. Ct. R. 341(h)(7) (eff. July 1, 2008). In the interest of justice, however, we will briefly consider the merits of the respondent's appeal. *Reed v. Retirement Board of Fireman's Annuity and Benefit Fund of Chicago*, 376 Ill. App. 3d 259 (2007).

¶ 32 Once a trial court has found a parent to be unfit, all considerations must yield to the best interest of the child. *In re D.T.*, 212 Ill. 2d 347 (2004). A court must not permit a child to live indefinitely with the lack of permanence inherent in a foster home. *In re C.P.*, 191 Ill. App. 3d 237 (1989). A trial court's best interest determination will not be disturbed unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31 (2005).

¶ 33 Here, the record indicates that K.H., who is now 8 years old, has lived with her foster mother for six years. They share a close relationship and love one another. K.H. refers to her

foster mother as "mommy," and her foster mother wants to adopt K.H. We acknowledge that the respondent stated that she loved K.H., but, she has had no contact with K.H. for over half of K.H.'s life and there is no evidence of love. As a result, the trial court's determination that it was in K.H.'s best interest to terminate the respondent's parental rights was not against the manifest weight of the evidence.

¶ 34

CONCLUSION

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

¶ 36 Affirmed.