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2012 IL App (4th) 110887-U

Filed 1/25/12

NOS. 4-11-0887, 4-11-0888 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: G.C., S.C., and E.C., Minors,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Vermilion County
v. (No. 4-11-0887))	Nos. 09JA124
MICHELLE CASTELLANO,)	09JA125
Respondent-Appellant.)	09JA126
_____)	
)	
In re: G.C., S.C., and E.C., Minors,)	
THE PEOPLE OF THE STATE OF ILLINOIS,)	
Petitioner-Appellee,)	
v. (No. 4-11-0888))	Honorable
GINO CASTELLANO,)	Craig H. DeArmond,
Respondent-Appellant.)	Judge Presiding.

PRESIDING JUSTICE TURNER delivered the judgment of the court.
Justices Steigmann and Pope concurred in the judgment.

ORDER

- ¶ 1 *Held:* In case No. 4-11-0887, where respondent mother was unfit and it was in the minors' best interest that her parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.
- ¶ 2 *Held:* In case No. 4-11-0888, where respondent father was unfit and it was in the minors' best interest that his parental rights be terminated, the trial court's decision on termination was not against the manifest weight of the evidence.
- ¶ 3 In August 2011, the State filed an amended petition to terminate the parental rights of respondent, Michelle Castellano, and respondent, Gino Castellano, as to their children,

G.C., S.C., and E.C. The trial court found both respondents unfit. In September 2011, the court found it in the minors' best interest that respondents' parental rights be terminated.

¶ 4 In these consolidated appeals, respondents argue the trial court erred in (1) finding them unfit and (2) finding it the minors' best interest that their parental rights be terminated. We affirm.

¶ 5 I. BACKGROUND

¶ 6 In October 2009, the State filed a petition for adjudication of wardship, alleging G.C., born in July 2009, was a neglected minor pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2008)). The petition alleged G.C. was neglected because his environment was injurious to his welfare due to inadequate supervision, malnutrition, and respondent father's alcohol use. The State also filed petitions for adjudication of wardship with respect to S.C., born in March 2007, and E.C., born in November 2005, alleging they were neglected minors because their environment was injurious to their welfare due to inadequate supervision and respondent father's alcohol use. The trial court found probable cause to believe the children were neglected and an immediate and urgent necessity existed to place them in the temporary custody of the Department of Children and Family Services (DCFS).

¶ 7 In January 2010, the trial court found the minors were neglected because their environment was injurious to their welfare based on respondent father's alcohol use. The court also found G.C. was neglected based on his failure to thrive. In its February 2010 dispositional order, the court found both respondents unfit. The court also found it in the minors' best interest that they be made wards of the court and placed custody and guardianship with DCFS.

¶ 8 In August 2011, the State filed an amended petition to terminate parental rights.

The State alleged both respondents were unfit because they failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2010)); (2) make reasonable efforts to correct the conditions that were the basis for the minors' removal within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(i) (West 2010)); (3) make reasonable progress toward the minors' return within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2010)); and (4) make reasonable progress toward the minors' return during any nine-month period after the end of the initial nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(iii) (West 2010)).

¶ 9 At the hearing on the amended petition, the State noted the adjudication occurred on January 8, 2010. Thus, the first nine-month period would end on October 8, 2010, and the second nine-month period would end on July 8, 2011.

¶ 10 Kristen Larkin, a caseworker with Catholic Charities, testified she had been the minors' caseworker since February 2010. The children came into the care of DCFS in October 2009. In a client service plan covering the time period of November 2009 through April 2010, respondents were required to cooperate with mental-health treatment, obtain a substance-abuse assessment, refrain from any domestic violence, maintain housing and income, and undergo parenting services. Larkin stated respondent mother was rated satisfactory for managing her mental illness. She was also rated satisfactory on the issues of domestic violence, maintaining housing, substance abuse, and parenting.

¶ 11 Larkin stated respondent father was rated as satisfactory on the issue of domestic violence because he was attending therapy consistently. He completed a substance-abuse assessment but did not complete the required 20 hours of treatment. He was rated satisfactory as

to income because he had two jobs during the rating period, although he was unemployed at the time of rating. He also rated satisfactory as to parenting. Both respondents attended all of their visits with the children.

¶ 12 Larkin testified she initiated a second client service plan in July 2010 that contained the same services and added a goal for marriage counseling. Larkin stated marriage counseling was necessary because respondents' relationship was "very unstable" and respondent mother was seeing someone else and would "leave and come back."

¶ 13 A client service plan spanning from April 2010 to October 2010 rated respondent mother unsatisfactory as to mental-health treatment. Larkin stated she stopped attending counseling regularly. Respondent mother was also rated unsatisfactory as to housing. Respondents were living at her grandfather's house, which had no power or water, and then her grandmother's house, which did not have enough room for the kids. Respondent mother was rated unsatisfactory as to domestic violence because of her "sporadic attendance with the marriage counseling." She was rated unsatisfactory as to maintaining income because she still had not been approved for disability payments and "she doesn't want" to find part-time employment. She was rated unsatisfactory as to parenting "because she stopped interacting with [the children] at visits" and offered "zero discipline." She missed two visits. Marriage counseling was rated unsatisfactory because she had been discharged.

¶ 14 Larkin testified respondent father was rated satisfactory as to domestic violence because he had no "further episodes of domestic violence." He was discharged from marriage counseling "for not cooperating" and for being "resistant to everything." He was rated satisfactory for substance-abuse treatment. He was rated unsatisfactory as to income because he was

unable to maintain stable employment. He was rated satisfactory as to parenting as he attended all of the visits.

¶ 15 Larkin also testified to the service plan covering the period between October 2010 through April 2011 that set out the same services. Respondent mother was rated unsatisfactory for mental-health treatment because she failed to consistently attend therapy. She was rated unsatisfactory as to housing, income, parenting, and marriage counseling.

¶ 16 Respondent father was rated unsatisfactory as to domestic violence because of his lack of progress in therapy. He was rated unsatisfactory as to individual therapy because he "refused to even accept that he needed to be in therapy." He rated satisfactory as to substance-abuse treatment. He rated unsatisfactory regarding income because "he had not had consistent employment." He was rated unsatisfactory as to parenting because "he stopped interacting with his children," refused to discipline the children, and "kind of regressed parenting-wise." In March 2011, respondents were provided with a parenting coach. Larkin initially saw improvements in the visits but, after six weeks, respondent father refused to take any suggestions. He was rated unsatisfactory as to marriage counseling because of "sporadic attendance" and his "inability to feel like he needed it."

¶ 17 Kelly Beisser, a marriage and family therapist at Catholic Charities, testified she met with respondents in November 2010 with the goal to increase their skills as to coping, communication, and parenting. Out of 43 scheduled appointments, respondents attended 34. Beisser referred respondent father for individual counseling but he made "minimal progress." Beisser stated he denies responsibility for his behavior and disagrees and argues during counseling sessions. Respondents were referred for additional parenting sessions because "some of their

parenting skills were lacking." During these sessions, Beisser observed "minimal" improvement in the visits with the children. Respondent father once told Beisser that he was not going to put his children in "time-out" because it did not work for them. Instead, he was going to tell them he would not allow them to go to school. Another time he stated he was going to put cayenne pepper in the children's mouths when they made a bad choice.

¶ 18 After the close of the State's evidence and on motion by respondents' counsel, the trial court dismissed the reasonable-efforts counts as to both respondents. Respondent mother chose not to testify.

¶ 19 Respondent father testified he was 30 years old and resided in a three-bedroom apartment in Alvin. He was working for Auto Zone. He stated he only missed one visit throughout the case. He stated the parenting classes and counseling taught him to discipline his children "a little bit better." Although he heard of techniques such as not allowing children to go to school and putting cayenne pepper in their mouths, he did not use these techniques. When he had to discipline the children, he would put them in time-out.

¶ 20 The trial court found respondents unfit for failing to maintain a reasonable degree of interest, concern, or responsibility and for failing to make reasonable progress toward the return of the minors during any nine-month period after the end of the initial nine-month period following the adjudication of neglect. The court found the State's evidence was insufficient to find respondents unfit for failing to make reasonable progress during the first nine months after the neglect adjudication.

¶ 21 In September 2011, the trial conducted the best-interest hearing. Kristen Larkin testified the children have been placed in a relative foster home since December 2009. Larkin

had no concerns with the children being placed in that home. She stated S.C. and E.C. are receiving counseling to help deal with their behaviors. She also stated the foster parent was willing to provide permanency for the children. The children have bonded with their foster parent.

¶ 22 Respondent father testified the children are "very excited" to see him during visits. S.C. told him she misses him and wants to come home. He stated he was willing to support his children financially and he loves them "very much." Respondent mother did not testify.

¶ 23 Following closing arguments, the trial court found it in the minors' best interest that respondents' parental rights be terminated. This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. Unfitness Findings

¶ 26 Respondents argue the trial court erred in finding them unfit. We disagree.

¶ 27 Because termination of parental rights is a serious matter, the State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re Veronica J.*, 371 Ill. App. 3d 822, 828, 867 N.E.2d 1134, 1139 (2007). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the

alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 28 In the case *sub judice*, the trial court found respondents unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Before finding a parent unfit on this ground, the court must "examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. "Completion of service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1065, 859 N.E.2d 123, 135 (2006). The parent may be found unfit for failing to maintain either interest, or concern, or responsibility; proof of all three is not required. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004).

¶ 29 The trial court also found respondents unfit for failing to make reasonable progress toward the return of the minors during any nine-month period after the end of the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(iii) (West 2010)). "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

"[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 re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

"At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *Daphnie E.*, 368 Ill. App. 3d at 1067, 859 N.E.2d at 137.

¶ 30 1. *Respondent Mother (No. 4-11-0887)*

¶ 31 The evidence indicates respondent mother failed to comply with the requirements of her service plan. Larkin testified respondent mother was rated unsatisfactory as to mental-health treatment because she stopped attending counseling. She was rated unsatisfactory as to maintaining income because she had no desire to get a job. Although she attended visits with her children, she stopped interacting with them and offered zero discipline, indicating a failure to implement the skills learned during parenting class. Housing was also inconsistent.

¶ 32 In this case, the evidence indicates respondent mother was unfit under both counts. Her failure to comply with the service plan goals was evidence of her lack of concern, interest, and responsibility as to the minors' welfare. The trial court found that when respondent mother dealt with issues superficially, such as visiting with the children, she made progress. But once she "had to really start working on issues, then this whole thing got derailed." Respondent

mother's failure to comply with her service plan clearly shows she has not made the reasonable progress necessary to move toward reunification. The trial court's findings of unfitness were not against the manifest weight of the evidence.

¶ 33 *2. Respondent Father (No. 4-11-0888)*

¶ 34 Larkin testified respondent father was discharged from marriage counseling for not cooperating and being "resistant to everything." He failed to make progress in individual therapy because he "refused to even accept that he needed to be in therapy." His employment was inconsistent. Although he visited with the children, he stopped interacting with them and refused to discipline them. While he understood appropriate parenting techniques, having completed parenting classes, he refused to implement those techniques, even suggesting the children be deprived of school or have cayenne pepper put in their mouths as discipline.

¶ 35 The evidence here indicates respondent father was unfit on both counts. After 18 months of services, his failure to comply with his service plan goals and implement what he has learned does not demonstrate a reasonable degree of interest, concern, or responsibility as to the minors' welfare. Instead of making progress on his service plan goals, respondent father has regressed. He refuses to accept responsibility and will not take suggestions or directions. The trial court found that "as long as [respondents] were being dealt with superficially, they were willing to go through the motions to get through this process." However, when caseworkers sought to probe more deeply into the issues, respondent father would have none of it. The evidence indicates respondent father failed to make reasonable progress toward reunification. Accordingly, we find the court's findings of unfitness were not against the manifest weight of the evidence.

¶ 36

B. Best-Interest Findings

¶ 37 Respondents argue the trial court erred in finding it in the minors' best interest that their parental rights be terminated. We disagree.

¶ 38 Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights. *M.H.*, 196 Ill. 2d at 362-63, 751 N.E.2d at 1140. Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child."

Daphnie E., 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) through (4.05)(j) (West 2010).

¶ 39 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Gwynne P.*, 346 Ill. App. 3d 584, 599, 805 N.E.2d 329, 342 (2004). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 40 In this case, Larkin testified the children had been living in a relative foster home since December 2009 and she had no concerns with that placement. S.C. and E.C. were receiving counseling to deal with certain behaviors. Both were doing well in school. G.C. "is doing well and is developmentally on target." Larkin stated the children have bonded with their foster parent, who was willing to provide permanency for them through adoption.

¶ 41 Larkin testified respondents were allowed one-hour visits with the children once a week. During the visits, Larkin stated the "children just run wild" and respondent father "does not interact with them." Respondent mother also struggles to interact with the children. After visits, the children show "more aggression" and "more back-talking." Larkin stated the behavior lasts approximately two to three days until they "get back into the consistent routine of time-outs."

¶ 42 The evidence in this case indicates it was in the minors' best interest that respondents' parental rights be terminated. The children were in a loving home and in need of permanency in their growing years. The trial court found there was "no reason for these children to be stuck in this limbo world of back and forth, living with people who care for them and then visiting for an hour a week with people that are their parents but aren't." Based on the evidence

presented, we find the court's order terminating respondents' parental rights was not against the manifest weight of the evidence.

¶ 43

III. CONCLUSION

¶ 44 For the reasons stated, we affirm the trial court's judgment in these consolidated appeals.

¶ 45 No. 4-11-0887: Affirmed.

¶ 46 No. 4-11-0888: Affirmed.