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2013 IL App (3d) 120920-U

Order filed February 22, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In Re A.S.,</i>)	Appeal from the Circuit Court
)	of the 14th Judicial Circuit,
a Minor)	Rock Island County, Illinois,
)	
(The People of the State of Illinois,)	Appeal No. 3-12-0920
)	Circuit No. 11-JA-11
Petitioner-Appellee,)	
)	Honorable
v.)	Raymond J. Conklin,
)	Judges, Presiding.
Aaron S.,)	
)	
Respondent-Appellant).)	

JUSTICE O'BRIEN delivered the judgment of the court.
Presiding Justice Wright and Justice Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's finding that a father was unfit for failing to make reasonable progress toward the return of his infant son within the nine months after the adjudication of neglect was not against the manifest weight of the evidence because the father continued to have domestic violence issues with the minor's mother, including two jail stays. In addition, the trial court's conclusion that it was in the best interests of the minor to terminate the father's parental rights was not against the manifest weight of the evidence.

¶ 2 The trial court adjudged the minor, A.S., to be neglected because of an environment injurious to his welfare due to the domestic violence between his parents, under section 2-3 of the Juvenile Court Act of 1987 (the Act) (705 ILCS 405/2-3 (West 2010)). At the dispositional hearing, the trial court found both the mother and respondent father, Aaron S., to be unfit because neither had made reasonable progress toward the return of the minor within nine months of the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2010). The parental rights of both parents were terminated, and the father appealed the finding of unfitness and the termination. We affirm.

¶ 3 **FACTS**

¶ 4 The State filed its petition alleging that A.S. was neglected and dependent based upon a domestic violence incident between the mother and the father in the hospital, before the minor was discharged after his birth. The minor was taken into temporary custody by the Department of Children and Family Services (DCFS) and placed with a foster family. Since the mother already had another infant who had been removed and placed in foster care, A.S. and the father were added to that service plan. In a report from DCFS dated February 23, 2011, it was noted that the father completed anger management classes in December 2010 (about a month prior to the minor's birth), but there were domestic violence events while he was attending, and more treatment was recommended. He also received a psychiatric evaluation in December 2010. The DCFS report recommended that the father participate in mental health counseling, participate in individual counseling, cooperate with all service providers, submit to random urine screens, and cooperate with a psychological evaluation and follow the recommendations.

¶ 5 Thereafter, on March 29, 2011, the minor was adjudicated neglected, and both parents

were admonished to cooperate with DCFS. The father was ordered to obtain psychological and psychiatric evaluations, cooperate with counseling, and obtain appropriate housing.

¶ 6 In the DCFS report dated September 19, 2011, it was noted that the father was in jail, since August 18, and was in jail from February - April, 2011. The report also documented further domestic violence incidents between the mother and the father. Also, the father was receiving psychiatric care for schizophrenia, but did not follow through with services. He also did not follow through on alcohol and drug treatment. The father was attending supervised visitation, two hours once a week, but he usually ended the visits early. He had no visitation while he was in jail.

¶ 7 In the DCFS service plan report, for the March - September 2011 time period, the father was found to have made unsatisfactory progress with respect to mental health and substance abuse evaluations and treatment. He was also found to have made unsatisfactory progress with respect to domestic violence because, although he completed the anger management class, there had been further incidents of domestic violence. A DCFS report in January 2012, covering the period from September 2011 to January 2012, indicated that the father still had not followed through with psychiatric services or substance abuse treatment.

¶ 8 On February 27, 2012, the State filed a petition to terminate the parental rights of both parents. With respect to the father, the petition alleged that he failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(I) (West 2010)); failed to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect, said period being March 29, 2011, through December 29, 2011 (750 ILCS 50/1(D)(m)(ii) (West 2010)); and failed to show a reasonable

degree of interest, concern or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2010)).

¶ 9 At the fitness hearing, Sherry Koerperich, a child welfare specialist with DCFS, testified that the minor and the father were added to an existing service plan, which concerned the mother and another infant, after the domestic violence incident just after the minor's birth. Koerperich was aware of 10 domestic violence incidents, with police involvement, between the father and mother between July 13, 2010, and January 19, 2012. Three of those resulted in arrests; and the father was in jail from February - April 2011, and again from August - September 2011.

Koerperich testified that, during the relevant nine-month period, the father did not follow the recommended mental health services because he did not take his medication. He did complete a substance abuse assessment on November 9, 2011, and no further substance abuse services were recommended. As for visitation, the father was incarcerated for about half of the nine-month period, but did attend visits between incarcerations. There was a delay in starting visits after his second incarceration, because the father did not contact her to set up the visits, so the visits did not resume until November 2011. At that time, the father started ending the visits early. It was Koerperich's opinion that the father was no closer to the return of the minor after the relevant nine-month period because of his incarcerations, the visitation issues, his failure to follow through with psychiatric treatment, and continuing domestic violence.

¶ 10 The father testified that he had a job as of the date of the fitness hearing, but he also received Social Security because of a mental disability, schizophrenia. He testified that most of the domestic violence incidents were minor squabbles, and the mother called the police. He confirmed that he had been in jail in 2011 from February to April and again from August through

early October. He confirmed that he had a diagnostic assessment on December 17, 2010, and that further therapy or counseling was recommended. He had another diagnostic assessment on November 7, 2011, and, again, further services were recommended. The father submitted exhibits that showed compliance with drug testing and doctor visits, but they all occurred after the relevant nine-month period. The father testified that he loved the minor, and cared for him during visits.

¶ 11 The trial court found that the father was unfit on the second basis: for failing to make reasonable progress toward the return of the minor within nine months after the adjudication of neglect. The trial court based its decision on the father's two jail stays during that time, additional domestic violence incidents with the mother, a lack of stable housing, and inconsistency in the performance of required services.

¶ 12 At the best interests hearing, Koerperich testified that the minor was currently in a licensed foster home, with his half-brother, where he had been placed on August 25, 2012. Prior to that, since two days after his birth, the minor had been in a different foster home, again with his sibling, but that was not a permanency option due to the age of the foster mother. One of the foster parents testified, relating that the minor and two of his siblings were placed with them. All three boys were bonded to the foster parents, and they intended to be a permanent placement option. Both foster parents had extended family in the area, and all three boys had already been part of family functions. The father testified that he was currently living with his grandparents, but that he had a job and continued to get Social Security disability benefits. The father testified that the minor loved to see him during his weekly visits, called him "dada," and the father often brought food or clothes for the minor. The father also noticed more scratches and bruises on the

minor since his move to the new foster home. The father testified that he was no longer in a relationship with the mother, and he had no recent police contacts.

¶ 13 The trial court considered the testimony at the best interest hearing and the criteria of the Juvenile Court Act, and it reviewed the unfitness order. It found the accusations made by the father of abuse by the foster parents to be not credible. The trial court found that any progress made by the father was too little, too late, with respect to the minor; and it found that it was in the best interests of the minor to terminate the rights of both the father and the mother. The father appealed, challenging the finding of unfitness and the termination.

¶ 14 ANALYSIS

¶ 15 The father contends that the trial court's finding that he was unfit was against the manifest weight of the evidence. He also argues that the trial court's finding that it was in A.S.'s best interest to terminate the father's parental rights was against the manifest weight of the evidence.

¶ 16 A parent is considered unfit under the Adoption Act if, *inter alia*, he fails to make reasonable progress toward return of the child within nine months of a neglect adjudication. 750 ILCS 50/1(D)(m)(ii) (West 2010). The "reasonable effort" standard is a subjective one and looks toward the goal of correcting the conditions that caused the child's removal. *In re R.L.*, 352 Ill. App. 3d 985 (2004). The focus is on whether the effort is reasonable for the particular parent. *In re R.L.*, 352 Ill. App. 3d at 998. In determining fitness, the focus is on the parent in question. *In re M.B.*, 332 Ill. App. 3d 996 (2002). The State must prove a parent's unfitness by clear and convincing evidence. *In re D.D.*, 196 Ill. 2d 405 (2001). A trial court's finding of unfitness will be overturned only if it is against the manifest weight of the evidence. *D.D.*, 196 2d at 417.

¶ 17 In this case, the minor was found neglected, primarily because of the incidents of

domestic violence between the father and the mother. During the relevant nine-month period, the father was in jail from February to April 2011, on a domestic battery charge. He was again arrested on charges of domestic battery that occurred on August 18, 2011, while he was still on probation from the prior offense. There were two additional domestic violence police contacts with the father and the mother earlier in August 2011. Thereafter, the father was again in jail, from August 18 until early October, 2011. Although the father engaged in some services while he was not in jail, he did not make reasonable progress toward correcting the conditions that necessitated the minor's removal, specifically, domestic violence toward the minor's mother. We find that the trial court's conclusion that the father was unfit was not against the manifest weight of the evidence.

¶ 18 After a parent has been found unfit, the trial court determines whether to terminate the parent's rights based on the child's best interest. *In re D.H.*, 323 Ill. App. 3d 1 (2001). In making a best interest determination, the trial court focuses on the child's welfare and whether termination would improve the child's future, including his financial, social, and emotional well-being. *In re Daphnie E.*, 368 Ill. App. 3d 1052 (2006). In determining whether termination of a parent's rights is in a minor's best interest, the trial court considers a number of factors, including the minor's physical safety and welfare, the minor's sense of attachments, the minor's need for permanence, and the preferences of individuals available to care for the minor. 705 ILCS 405/1-3(4.05)(a) through (j) (West 2010). The State must prove by a preponderance of the evidence that termination is in the child's best interest. *In re D.T.*, 212 Ill. 2d 347 (2004). We will not reverse a trial court's finding that termination of parental rights is in the child's best interest unless it is against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31

(2005).

¶ 19 The father argues that he had a good bond with the minor, and the minor was not strongly bonded to the foster parents because he had only been placed with them about a month before the best interest hearing. The father contends that we should disregard the best interest arguments advanced by the State because DCFS disregarded a mandate to try to place the minor with a relative. The State argues that it proved by a preponderance of the evidence that it was in the minor's best interest to terminate the father's parental rights, and the actions of DCFS were not relevant to that determination.

¶ 20 At a best interest hearing, the focus shifts from the parent to the child. The parent's interest in maintaining a parent/child relationship must yield to the child's interest in a stable, loving home. *In re I.B.*, 397 Ill. App. 3d 335 (2009). At the best interest hearing, the caseworker testified that the minor's initial placement was not a viable permanency option because the foster mother was too old. Thus, over a period of several months, DCFS transitioned the minor into a permanent foster home. One of those foster parents testified that the minor was attached and bonded to them, was adjusting well, and they wished to provide permanency for A.S. through adoption. The trial court specifically stated that it considered the best interest criteria of the Juvenile Court Act, acknowledged that the minor had only been in his current foster placement for a short time, but found that it was in the minor's best interest to terminate the father's parental rights.

¶ 21 The trial court's best interest finding was not against the manifest weight of the evidence. The evidence showed that the minor, who had been in foster care since birth, was living with a foster family with whom he had bonded and who was willing to provide permanency. That

family made an effort to ease the minor's transition from an earlier foster placement over a period of several months. As the trial court noted, although the father was making some progress, the father's progress was not the focus of the best interest hearing.

¶ 22

CONCLUSION

¶ 23 The judgment of the circuit court of Rock Island County is affirmed.

¶ 24 Affirmed.