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2013 IL App (3d) 120965-U

Order filed August 14, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> J.C., C.C., and K.O.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
Minors)	Tazewell County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-12-0965
)	Circuit Nos. 09-JA-95
v.)	09-JA-96
)	09-JA-97
S.B.,)	
)	Honorable Albert L. Purham, Jr.,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice Wright specially concurred, joined by Justice Carter.

ORDER

- ¶ 1 *Held:* The trial court's denial of respondent's motion for fitness is not against the manifest weight of the evidence where the record indicates she married a former gang member with a record of criminal violence, then violated the court's order to allow him no contact with the minors.
- ¶ 2 Having previously been found an unfit parent, respondent, S.B., filed a "motion for fitness," which the circuit court of Tazewell County denied. She appeals, claiming she proved

her fitness by a preponderance of the evidence and, as such, the trial court's denial of her motion for fitness is against the manifest weight of the evidence.

¶ 3 BACKGROUND

¶ 4 On August 13, 2009, the State filed juvenile petitions alleging neglect on behalf of minors J.C., C.C., and K.O. The petitions alleged that the minors lived in an environment injurious to their welfare due to respondent's unresolved alcohol abuse issues and due to the fact that she could not provide minimal parenting to the minors. An adjudicatory order entered October 16, 2009, found the minors neglected based on living in an injurious environment.

¶ 5 Following a dispositional hearing, the circuit court found respondent fit, yet still ordered the minors to live with their fathers. The court further ordered respondent to perform tasks to correct the conditions that led to the neglect finding. Those tasks included, *inter alia*: cooperating with the Department of Children and Family Services (DCFS); obtaining a drug and alcohol assessment and complying with recommended treatment; performing three random drug drops or Breathalyzers per month; maintaining stable housing conducive to the safe and healthy rearing of the minors; and not consuming alcohol or mood-altering substances without caseworker knowledge.

¶ 6 At the permanency review on July 1, 2010, the State requested that respondent be found unfit to have custody of the minors due to her inability to control her alcohol problem. The State also believed respondent unfit due to her involvement with David Bohm. Mr. Bohm's criminal record includes eight felony convictions and the record indicates he was released from prison just months prior to the permanency hearing.

¶ 7 The trial court found respondent dispositionally unfit for failure to make reasonable and substantial progress and for failure to make reasonable efforts toward the return of the three minors. The permanency review order indicates that respondent and the minors' fathers shall allow no contact at all between the minors and David Bohm and that all visits between respondent and the minors shall be supervised.

¶ 8 Respondent did not appeal any of the aforementioned orders.

¶ 9 Respondent filed a *pro se* motion for fitness in May of 2012. After obtaining counsel, respondent filed an amended motion for fitness on August 31, 2012. The amended motion contends that she has been sober since April of 2011 and completed a treatment program in December of 2011. She acknowledged relapsing once during her treatment; that being in August of 2011, which was the last time she used alcohol. The motion notes she is employed, was married, and has resided in the same residence with her husband since December of 2011.

¶ 10 On October 18, 2012, the trial court held a hearing on respondent's amended motion. Neither party provided testimony at the hearing. Respondent's counsel asked the trial court to consider the DCFS report, the contents of which the State stipulated to. The other parties at the hearing, including the guardian *ad litem* (GAL) and the fathers of the three minor children, agreed that the DCFS caseworker, who prepared the report, did not need to testify.

¶ 11 The caseworker prepared the DCFS report specifically for the hearing on respondent's amended motion for fitness. The report indicates that respondent is married to David Bohm and they live in adequate housing in Peoria. Respondent receives income from the State for caring for her sister, who has a developmental disability. Respondent had completed many of the tasks

ordered in the dispositional order, including: cooperating with DCFS; completing an alcohol assessment; completing the recommended treatment for her diagnosed alcohol and cocaine dependence; participating in random breath and urine screens, the results of which were negative; and refraining from consuming alcohol or mood-altering substances since April of 2011.

¶ 12 The report continued, noting that respondent married David Bohm in February of 2011. DCFS obtained a criminal history report on David, which revealed he had been a member of the Gangster Disciples street gang and had been arrested for 35 offenses. Mr. Bohm has been convicted of eight felonies: forgery; theft; aggravated battery with a weapon; possessing and selling a stolen vehicle; harassment of a juror or witness; aggravated battery in a public place; armed robbery; and having alcohol in a penal institution. The caseworker's report states that Mr. Bohm expressed embarrassment and remorse over those actions.

¶ 13 The report indicates that respondent's relationship with C.C. is strong and positive, with C.C. being the main reason respondent sought a return to fitness. Respondent's relationship with J.J. was not strong or positive. J.J. left respondent "vitriolic facebook messages." Respondent has no relationship with K.O. and has had no interaction with him for years, but she wishes for a better relationship with K.O.

¶ 14 Ultimately, the caseworker recommended respondent be found fit.

¶ 15 The GAL gave an oral report at the fitness hearing. She stated that she spoke with C.C., who informed her that respondent had matured and was acting like a parent instead of a friend. C.C., however, "clearly dislikes Mr. Bohm" and C.C. had contact with Mr. Bohm in violation of a prior order, which prohibited Mr. Bohm to have contact with any of the minors. The GAL

described an interaction between C.C. and Mr. Bohm in which Bohm became upset with C.C. and then proclaimed, "I'm going to smack the taste out of your mouth." C.C. responded by telling Bohm to "get your stuff and get out of my mom's house." The GAL believed that respondent was "clearly *** allowing contact all the time" between at least C.C. and Bohm in contravention of a court order.

¶ 16 Ultimately, the trial court denied the mother's amended motion for fitness. The court stated it was a hard decision as the mother has "done a lot" to change her life. The court stated that it was "satisfied with your efforts of alcohol recovery, but you need to show me that you are willing to put these kids in an environment that's free of influences of Mr. Bohm." The court noted respondent could do this by showing Mr. Bohm had changed through completion of anger management or, alternatively, indicating that respondent could seek to obtain an order of protection against Mr. Bohm. The court again reiterated its belief that respondent made "significant efforts" toward fitness, but was troubled stating, "you have got to deal with people that you bring into your kids' life and into their environment."

¶ 17 On October 18, 2012, the trial court entered an order denying respondent's motion. The order states that the "motion for fitness is denied due to her continued association with Mr. Bohm who is in need of anger management. The court advises the mother of possible contempt finding and being sentenced to jail if she allows further contact between Mr. Bohm and the minors."

Respondent filed a timely notice of appeal on November 15, 2012.

¶ 18

ANALYSIS

¶ 19 The sole question presented for review is whether the trial court erred in finding that the

respondent remained unfit to have custody of her minor children. A trial court's determination regarding a dispositional order will be reversed only when it is against the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005).

¶ 20 A ruling is against the manifest weight of the evidence only if it is clearly evident from the record that the trial court should have reached the opposite conclusion. *In re C.N.*, 196 Ill. 2d 181, 208 (2001); *In re Tiffany M.*, 353 Ill. App. 3d 883 (2004). Under the manifest weight of the evidence standard, deference is given to the trial court as finder of fact as the trial court is in the best position to observe the conduct and demeanor of the parties or witnesses and has a degree of familiarity with the evidence that a reviewing court cannot possibly obtain. *In re A.W.*, 231 Ill. 2d 92, 102(2008). Under the standard, a court of review will not substitute its judgment for that of the trial court on such matters as witness credibility, the weight to be given evidence, and the inferences drawn therefrom even if the reviewing court would have reached a different conclusion. *Id.* at 102.

¶ 21 Respondent submits that the denial of her motion for fitness is against the manifest weight of the evidence as she eventually completed the vast majority of tasks set out for her in the December 3, 2009, dispositional order. Those tasks include successfully: completing treatment; providing negative random urine and Breathalyzer tests; refraining from consuming alcohol; cooperation with DCFS; keeping K.O. in school; maintaining suitable housing; and keeping the caseworker informed of her personal relationships.

¶ 22 While respondent acknowledges that the original finding of unfitness stemmed from her failure to complete these tasks by the time of the permanency review of July 2010, she claims it

is undisputed that she eventually completed them. She notes that the completion of the tasks resulted in DCFS reopening her case and authoring a report recommending she be found fit. She quarrels with the fact that the trial court denied her motion, not due to issues arising from alcohol dependence, but instead due to her association with Mr. Bohm.

¶ 23 The State responds by correctly indicating that the Juvenile Court Act of 1987 prohibits a trial judge, in cases in which a minor is found to be neglected or abused, from restoring custody to "any parent *** until such time as *** the fitness of such parent *** to care for the minor without endangering the minor's health or safety" is affirmatively established. 705 ILCS 405/2-23(1)(a) (West 2010). The State acknowledges that its original petitions centered on respondent's alcohol use and lauds the progress she has made in that area. However, the State posits that the trial court's finding is simply not against the manifest weight of the evidence. The State argues that her "decision to marry a violent former gang member with obvious anger issues shows that she has not committed to doing what is best for her children."

¶ 24 Given the facts before us and the standard of review, we cannot say the trial court's denial of respondent's motion for fitness is against the manifest weight of the evidence. The opposite conclusion, that respondent proved her fitness by a preponderance of the evidence, is not clearly evident from the record.

¶ 25 Like the State and the trial court, we acknowledge and commend respondent on the progress she has made. Nevertheless, the record clearly indicates that the mother allowed contact between at least one of the minors and Mr. Bohm in direct contravention of a court order. Mr. Bohm's violent past is well documented. It was for the trial court, not this court, to determine the

weight to be given and inferences drawn from the fact that Mr. Bohm told one of neglected minors that he would slap the taste out of the minor's mouth. Respondent argues that was an innocuous statement to a teenager who is "too old for a time out." Maybe. But, again, this court is not allowed to reweigh that evidence or supplant the inferences drawn therefrom by the trial court with those of our own. *A.W.*, 231 Ill. 2d at 102.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Tazewell County is affirmed.

¶ 28 Affirmed.

¶ 29 PRESIDING JUSTICE WRIGHT, specially concurring.

¶ 30 I concur in the result but do not share the views expressed in paragraph 25 of the order.

¶ 31 JUSTICE CARTER joins in this special concurrence.