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2013 IL App (3d) 130008-U

Order filed May 24, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

In re J.B. a Minor,)	Appeal from the Circuit Court
)	of the 9th Judicial Circuit,
(The People of the State of Illinois,)	Knox County, Illinois,
)	
Petitioner-Appellee,)	Appeal No. 3-13-0008
)	Circuit No. 10-JA-4
v.)	
)	Honorable
Charles D.,)	Greg McClintock,
)	Dwayne I. Morrison,
Respondent-Appellant).)	Judges, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court properly found the father unfit for failure to make reasonable progress toward reunification and terminated his parental rights.

¶ 2 The trial court found respondent Charles D. to be an unfit parent of J.B. and terminated his parental rights after finding it was in J.B.'s best interest to do so. We affirm the unfitness finding and the termination of Charles's parental rights.

¶ 3

FACTS

¶ 4 The State filed a juvenile petition on January 26, 2010, alleging that J.B., who was born January 19, 2010, was neglected. 705 ILCS 405/2-3(1)(b) (West 2010). J.B.'s mother, Brandalynn, and putative father, Josh B., were named in the petition and admitted the allegations. In April 2010, the trial court entered a finding of neglect. J.B., who had been placed in shelter care after her birth, remained in custody of the Department of Children and Family Services (DCFS) and with a foster family. At a June 1, 2010 dispositional hearing, Josh B. was excluded as J.B.'s father based on the results of deoxyribonucleic acid (DNA) testing. The dispositional proceeding continued, with the unknown father represented by counsel who had been originally appointed to represent Josh B. At the conclusion of the hearing, the trial court entered an order acknowledging the father was unnamed but represented and finding the "unknown fathers" unfit, unable, and unwilling "to care for, protect, train, educate, supervise or discipline the minor and placement with him is contrary to the health, safety and best interest of the minor because he is currently homeless and has not had contact with the minor."

¶ 5 At the hearing, Charles was identified as a possible father. The trial court indicated it could not order DNA testing because Charles was not a party to the proceedings. Charles was incarcerated at Danville Correction Center, serving a 15-year sentence in the Illinois Department of Corrections (DOC) for possession of methamphetamine. His expected parole date is February 6, 2017. In January 2011, the trial court ordered DNA testing of Charles, which revealed him to be J.B.'s father. The DNA results were forwarded to the caseworker in March 2011 and filed with the court in April 2011. At a permanency review hearing on June 7, 2011, the caseworker stated Charles indicated he was willing to be involved with J.B. once determined to be her father. On July 12, 2012, the trial court entered a paternity order declaring Charles to be the father of J.B.

¶ 6 A February 2012 permanency review update informed that J.B.’s caseworker had scheduled an integrated assessment with Charles via a phone interview. A permanency review order dated February 7, 2012, found Charles had not made substantial progress toward J.B.’s return home and the trial court directed the State to file a petition to terminate Charles’s parental rights because J.B. had been in foster care for two years. In March 2012, a service plan was initiated for Charles and presented to the trial court at an April 2012 status hearing. At the hearing, the caseworker informed the trial court that Charles had “willingly participated” in the integrated assessment interview. The integrated assessment indicated that Charles was interested in pursuing college courses to become a drug counselor for the sake of his daughter. He had never met J.B. and waived visitation because of the distance and the inappropriateness of the prison environment. The report recommended Charles participate in a substance abuse and mental health assessments, parenting education, therapy, and anger management and a service plan for Charles was entered for those services. The service plan also required that Charles provide a stable home and financial support for J.B.

¶ 7 The State filed an amended supplemental petition to terminate in May 2012. The petition alleged that Charles was an unfit person based on the following grounds:

- a. [Charles] has failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor’s welfare (750 ILCS 50/1D(b)).
- b. [Charles] has failed to make reasonable progress toward the return of the minor to the parental custody within any 9[-]month period following the initial 9 months of adjudication. 750 ILCS 50/1D(m)(iii).

- c. [Charles] has failed to make reasonable progress toward the return of the minor to parental custody within 9 months from the adjudication of neglect (750 ILCS 50/1D(m)(ii)).”

¶ 8 In June 2012, Charles made his first appearance on the petition to terminate and denied its allegations. At a July 2012 permanency review hearing, a discussion took place about Charles’s participation in classes that made certain court hearings inconvenient. The permanency review report indicated that although Charles had been mailed the service plan, he had not enrolled in a drug counseling program or participated in any recommended services. His progress was rated unsatisfactory on all tasks. An October 2012 permanency review update indicated Charles had failed to make any progress and the trial court ordered the goal be changed from substitute care to termination of parental rights.

¶ 9 A hearing on the State’s petition to terminate took place on October 9, 2012. The caseworker testified that Charles had a service plan but had not completed any recommended services. Classes available to Charles in the DOC included anger management, parenting education, and substance abuse classes. Charles maintained communication with the caseworker and inquired about J.B. Charles wrote letters to J.B. and expressed concern about her medical issues. He also provided the foster family information about his family so J.B. could have a family book. Due to his incarceration, Charles could not provide a stable home or financial resources for J.B. On cross-examination, the caseworker stated that at the court recess, Charles indicated that he had taken parenting and substance abuse classes but did not provide certificates of completion. He also indicated he had started anger management class but dropped it because it conflicted with court appearances. The former caseworker who had been responsible for the case from January 2010 to

November 2011 testified. J.B. tested positive at birth for cannabis, which was the basis of the neglect petition. J.B. has been in care of the State since that time. She met Charles one time in the courtroom while she was still serving as caseworker. He said he was willing to do whatever he needed to do to be part of J.B.'s life.

¶ 10 The trial court took the petition to terminate under advisement and the hearing proceeded with a permanency review. The October 2012 permanency review report was presented. The trial court took judicial notice of the earlier testimony on the termination petition and found that Charles had failed to make any reasonable progress toward the goal of returning J.B. home within 12 months. The trial court entered a new goal of substitute care pending determination of the termination petition. On October 29, 2012, the trial court entered an order finding Charles unfit. The trial court noted that Charles had only participated in a substance abuse class and had failed to make reasonable progress during any period, including the initial nine-month period after the neglect adjudication and the nine-month period at issue on appeal. 750 ILCS 50/1(D)(m) (ii), (iii) (West 2010). The trial court further found that the State did not prove Charles failed to maintain a reasonable degree of interest and denied the petition on that ground. 750 ILCS 50/1D(b) (West 2010).

¶ 11 A best interest hearing took place in December 2012. The caseworker recommended in the best interest report termination was in J.B.'s best interest and testified that J.B.'s foster parents were committed to adopting her. Charles had provided the caseworker four certificates of completion, including substance abuse and parenting classes. He could not provide financial support or stable housing. J.B.'s foster mother testified that Charles sends letters to J.B. and that he gave J.B. a personalized gift. Charles testified that he has been in the DOC since December 2009. He cares about J.B. but has never met her. He sends letters to J.B.'s foster family. He completed substance

abuse and parenting classes and provided certificates to the caseworker. He also completed a two-day seminar called “Malachi Dads” that included parenting education.

¶ 12 The trial court found that Charles had little opportunity to accomplish much on his service plan but by his own fault due to his incarceration. It pointed to Charles’s release date of February 2017 and J.B.’s need for permanency and stability, finding it was in J.B.’s best interest that Charles’s parental rights be terminated. The trial court entered an order terminating Charles’ parental rights to J.B. in December 2012. Charles appealed.

¶ 13 **ANALYSIS**

¶ 14 There is a two-step process for the termination of parental rights under section 2-29 of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2010)). First, the trial court must find the parent is unfit. 750 ILCS 50/1(D) (West 2010); 705 ILCS 405/2-29(2), (4) (West 2010). After a parent is found unfit, the trial court considers whether it is in the child’s best interest to terminate the parental rights. 705 ILCS 405/2-29(2) (West 2010). The State must prove unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). A trial court’s unfitness findings are accorded great deference on review and we will not reverse the findings unless they are contrary to the manifest weight of the evidence. *Jordan V.*, 347 Ill. App. 3d at 1067.

¶ 15 A parent’s failure to make “reasonable progress” toward the return of the child in any nine-month period subsequent to the initial nine-month period after the neglect adjudication is grounds for a finding of unfitness. 750 ILCS 50/1(D)(m)(iii) (West 2010). Reasonable progress requires measurable or demonstrable movement toward the goal of the reunification. *In re D.J.S.*, 308 Ill. App. 3d 291, 294-95 (1999). A parent’s reasonable progress is measured by his compliance with service plans and court directives, in light of the grounds for removal of the child and other conditions

that would prevent returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). When the evidence sufficiently demonstrates that the parent’s progress “is of such a quality that the child can be returned to the parent in the near future,” the trial court may find reasonable progress had been demonstrated. *In re K.P.*, 305 Ill. App. 3d 175, 180 (1999). A parent’s incarceration does not excuse his failure to make reasonable progress. *In re K.S.*, 203 Ill. App. 3d 586, 604 (1990).

¶ 16 Charles argues on appeal that the State did not prove by clear and convincing evidence that he was unfit for failure to make reasonable progress. He does not challenge the trial court’s best interest hearing in his brief, despite raising the issue in his notice of appeal. Because Charles did not present any argument regarding the best interest determination, we will not consider it on appeal. Charles asserts, rather, that he maintained reasonable progress by doing what he could after his parentage was confirmed and that under the circumstances, he made steady and reasonable progress toward reunification. We disagree.

¶ 17 The trial court’s finding that Charles failed to make reasonable progress during any nine-month period is supported by the evidence. Charles was identified as a putative father as early as June 2010. He did nothing to determine J.B.’s parentage until he voluntarily submitted to DNA testing in January 2011. He was informed of the DNA results in April 2011 and adjudicated as J.B.’s father in July 2011. From the date of the paternity finding and during the entirety of 2012, Charles did not take any actions toward acknowledging his parental responsibilities. Although he willingly participated in the integrated assessment interview in February 2012, a permanency review hearing that same month established that Charles failed to make reasonable progress. After a service plan was initiated in March 2012, there was no evidence presented that he participated in any service tasks or

made any movement toward reunification until after the petition to terminate was filed in May 2012. A July 2012 permanency review hearing established that Charles had failed to make reasonable progress. While this hearing took place after the nine-month period at issue, it demonstrates that Charles made no demonstrable movement from February to May, when the petition was filed and during the period at issue. Charles did not submit documentation at the October 2012 best interest hearing demonstrating that he completed any classes in the DOC. Thus, the evidence supports the trial court's finding that Charles failed to make reasonable progress in nine-month period between July 2011 and May 2012.

¶ 18 As noted by the trial court, Charles's incarceration in the DOC until 2017 prohibits him from caring for J.B. financially or providing stable housing for her. While Charles's willingness to participate in J.B.'s life is laudable, he is unable to care for J.B., despite his willingness to do so. We acknowledge Charles's efforts to communicate with J.B. by sending letters and gifts to her foster family. However, in the nine-month period between July 2011 and May 2012, the only progress made by Charles toward reunification was his participation in the integrated assessment interview. He did not engage in any services or make any demonstrable progress. We find the evidence supports the State's allegations of unfitness and affirm the trial court's termination of Charles's parental rights.

¶ 19 For the foregoing reasons, the judgment of the circuit court of Knox County is affirmed.

¶ 20 Affirmed.