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2013 IL App (3d) 130039-U

Order filed May 7, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

<i>In re</i> K.S.,)	Appeal from the Circuit Court
)	of the 10th Judicial Circuit,
a Minor)	Peoria County, Illinois,
)	
(The People of the State of Illinois,)	
)	
Petitioner-Appellee,)	Appeal No. 3-13-0039
)	Circuit No. 09-JA-128
v.)	
)	
Heather A.,)	Honorable
)	Chris L. Fredericksen,
Respondent-Appellant).)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and Schmidt concurred in the judgment.

ORDER

- ¶ 1 *Held:* The trial court's findings that respondent failed to make reasonable progress toward the return home of her minor child and that it was in the minor's best interest to terminate respondent's parental rights were not against the manifest weight of the evidence.
- ¶ 2 Respondent is the mother of K.S. The trial court found respondent to be an unfit parent and determined that it was in the best interest of K.S. to terminate respondent's parental rights.

Respondent appeals the finding of unfitness and the termination of her parental rights. We affirm.

¶ 3

FACTS

¶ 4 On May 12, 2009, the State filed a juvenile petition, alleging that K.S. was neglected because her environment was injurious to her welfare. Specifically, the petition alleged that (1) on March 31, 2009, Brian Sackman, the father of K.S.'s half sibling, M.S., came to respondent's home, where he found very little food, a lot of beer and a hungry M.S., who reported that she had not eaten in a day and a half; (2) on December 3, 2008, Sackman went to respondent's house and found respondent and her father intoxicated with K.S. and M.S. present; when police arrived, respondent admitted she smoked cannabis and did not know how much she had to drink; (3) respondent has a substance abuse problem; (4) respondent was previously indicated by DCFS in December 2008 for inadequate supervision; and (5) K.S.'s father, Daniel S., has a criminal history, which includes convictions for resisting police, aggravated assault, aggravated battery, domestic battery, criminal damage to property, and delivery of a controlled substance in the presence of his two-week-old child.

¶ 5 Respondent stipulated that the State could prove the allegations contained in the petition. Following an adjudicatory hearing, the court found K.S. neglected, based on the allegations in the petition, respondent's substance abuse problems, and Daniel S.'s criminal history. The court found respondent unfit based on the allegations set forth in the juvenile petition. K.S. was made a ward of the court, with the Illinois Department of Children and Family Services (DCFS) named as her guardian, with the right to place. The court ordered respondent to submit to random drug drops twice a month, successfully complete counseling, successfully complete a domestic violence course, obtain and maintain stable housing, visit K.S. as scheduled, obtain a G.E.D. or employment and submit five searches per week until employed or enrolled in a G.E.D. program. At that time,

respondent had already completed parenting classes and an inpatient drug and alcohol treatment program.

¶ 6 Following a relapse, in February 2011, respondent successfully completed another inpatient drug and alcohol treatment program. Drug drops completed by respondent from February to July 2011 were negative. From August to October 2011, respondent failed to complete any drug drops. In October 2011, K.S.'s caseworker, Craig Nellum, received a voice mail from respondent who "sounded extremely intoxicated."

¶ 7 At a permanency review hearing on November 16, 2011, the trial court changed the permanency goal and review plan for K.S. from "return home pending status" to "substitute care pending court decision" because respondent failed to make reasonable efforts to achieve the former service plan and permanency goal. The court ordered that respondent's visits with K.S. be supervised and further ordered that "if mother appears under the influence at any visit, that visit is to be suspended."

¶ 8 From November 2011 to April 2012, respondent failed to complete any of her required drug drops. On May 30, 2012, the State filed a petition to terminate respondent's parental rights. The petition alleged that respondent was an unfit person in that she failed to make reasonable progress toward the return of K.S. during the nine month period of July 1, 2011 to April 1, 2012. Respondent filed an answer denying the allegations of the petition.

¶ 9 On December 5, 2012, a hearing on the petition was held. The State moved to enter into evidence various documents, including respondent's drop records and respondent's alcohol treatment records. Those records showed that respondent enrolled in an outpatient drug treatment program in February 2011 but was terminated from that program in August 2011, for lack of attendance. The

State also introduced a certified copy of a ticket respondent received on October 14, 2011, for being an intoxicated pedestrian on a roadway. Respondent pled guilty to that ticket.

¶ 10 The State's first witness was Officer Rory Poynter of the Peoria police department. He was working on August 26, 2011, when he was dispatched to a bar, Club Cabana. Respondent was being treated by medical personnel when Poynter arrived. Poynter first spoke to respondent in an ambulance. At that time, respondent "appeared to be highly intoxicated." She had slurred speech, and a strong odor of alcohol was emanating from her. Poynter also spoke to respondent at the hospital. According to Poynter, respondent still seemed highly intoxicated. As a result of respondent's intoxication, it was difficult for Poynter to determine exactly what happened at the bar.

¶ 11 Lela Keyes testified that she became respondent's caseworker in January 2012. From January to April 2012, respondent did not complete any drug drops or provide Keyes with any employment logs. On March 25, 2012, Keyes called respondent to remind her of an upcoming visit with K.S. During that phone call, respondent repeated herself, cried and slurred her words. Based on respondent's behavior, Keyes was concerned that respondent was intoxicated or under the influence of an illegal substance.

¶ 12 Keyes testified that on November 16, 2011, the goal for K.S. was changed from "return home" to "substitute care." When that happened, DCFS no longer paid for respondent's drug drops. Respondent complained that she could not afford to pay for the drug drops and requested to have them performed at a less expensive facility. Keyes obtained approval for respondent to perform her drug drops at the less expensive facility. After receiving that approval, respondent never performed any drops at the new facility.

¶ 13 Respondent testified that she completed an inpatient alcohol and drug treatment program in

December 2009. She maintained her sobriety for a while but then relapsed. She reentered inpatient treatment and completed that treatment in February 2011. She testified that she completed a parenting class and a domestic violence prevention class and obtained her G.E.D. prior to July 2011. From July 2011 to April 2012, she visited with K.S. regularly. Respondent initially testified that she completed her drug drops until she was required to pay for them in November 2011, but later admitted that she did not complete drug drops in August, September or October 2011, when she did not have to pay for them.

¶ 14 Respondent recalled having a telephone conversation with Keyes in March 2012, during which she cried because she and her sister were arguing. She denied drinking alcohol prior to that conversation. Respondent testified that she was attending Alcoholics Anonymous (AA) meetings "off and on," but not consistently, between July 2011 and April 2012.

¶ 15 After considering the evidence and arguments, the trial court found that respondent failed to make reasonable progress from July 1, 2011 to April 1, 2012. The court acknowledged that respondent had "complied with a substantial number of services that were originally ordered," and noted that those services were completed before the applicable nine-month period began. Moreover, the court found insufficient evidence that respondent had eliminated her biggest problem, substance abuse.

¶ 16 In January 2013, K.S.'s caseworker, Lela Keyes, prepared a best interest report. According to the report, K.S. is a healthy twelve-year-old girl. She lives in the foster home of her maternal aunt, Brandy Fraim, and her husband, Chad Fraim. K.S. has lived with the Fraims since April 2009. K.S. is in sixth grade. Her teacher reports that she is doing well in school and has good attendance. The faculty of her school reports that K.S. "is a joy to be around."

¶ 17 The Fraims provide K.S. with all of her basic needs of food, shelter, health and clothing. They also make sure that all of K.S.'s medical needs are met and assist her with her school assignments, when necessary.

¶ 18 Keyes described K.S. as reserved "most of the time" but stated that she becomes talkative and playful when she feels comfortable. According to Keyes, K.S. has a good relationship with her foster parents and their two children, who are her cousins. She has no behavioral or educational problems.

¶ 19 Keyes recommended that respondent's parental rights be terminated. Keyes found that K.S.'s "sense of security and familiarity lie[s] within the foster family" who "are her family also." Keyes explained that K.S. "needs to have permanency as it has been over three years since she has been in foster care and [respondent] has not made reasonable efforts or substantial progress." The Fraims are willing to adopt K.S.

¶ 20 At the best interest hearing, Keyes testified that K.S. loves respondent but does not want to live with her because she cannot trust that she would be safe with her. K.S. is not confident that respondent will stop "doing the things that she was doing before."

¶ 21 Respondent testified that when she has visits with K.S. things go "pretty good." K.S. seems happy to see her. When K.S. was first taken into foster care, she told respondent that she was scared to live with her. K.S. has not told respondent that she wants to live with her since then.

¶ 22 Respondent testified that she has not attended any AA meetings in the past two weeks, but did before that. She agreed that she had not completed any drug drops since July 2011. She testified that she has been sober for six to twelve months and has not taken illegal drugs in "years." She testified that she is unemployed. She currently lives with her boyfriend.

¶ 23 At the close of the evidence, the trial court concluded that it was in K.S.'s best interest to

terminate respondent's parental rights. The court found that K.S. was in a safe and secure environment with her aunt and uncle, who can provide K.S. permanence and safety, which respondent cannot do.

¶ 24

ANALYSIS

¶ 25 The Adoption Act provides a bifurcated mechanism to determine whether parental rights may be terminated. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40. There must first be a showing of parental unfitness followed by a showing that the best interest of the child is served by severing parental rights. *Id.* The State must prove by clear and convincing evidence one statutory factor of unfitness before the termination of parental rights may ensue. *Id.* If properly proven, any one ground of unfitness is sufficient to find a parent unfit. *Id.*

¶ 26

I. Unfitness

¶ 27 Respondent first argues that the trial court's finding of unfitness was against the manifest weight of the evidence because she completed some of the court-ordered services.

¶ 28 A trial court's opportunity to view and evaluate the parties and their testimony is far superior to that of a reviewing court. *In re W.U., W.K. & L.K.*, 199 Ill. App. 3d 320, 325 (1990). Accordingly, its finding should be given great deference. *Id.* A trial court's fitness determination will not be disturbed unless it is against the manifest weight of the evidence. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). A court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Id.*

¶ 29 Pursuant to the Adoption Act, a parent is unfit if he or she failed "to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglected or abused minor." 750 ILCS

50/1(D)(m)(iii) (West 2010). Reasonable progress is judged by an objective standard based on the amount of progress measured from the conditions existing at the time custody was taken from the parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification. *Id.*

¶ 30 The benchmark for measuring a parent's progress 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 that gave rise to the removal of the child and other conditions that later become known and would prevent the court from returning custody of the child to the parent. *Id.* "Reasonable progress" exists when the court can conclude that it will be able to order the child returned to parental custody in the near future. *Id.* Some progress is not necessarily the same as "reasonable progress" considering the right of children not to be left in limbo for an unreasonable amount of time. *In re A.C.B.*, 153 Ill. App. 3d 704, 708-709 (1987).

¶ 31 Here, the State alleged respondent was an unfit parent because she failed to make reasonable progress toward K.S.'s return during the nine-month period of July 1, 2011 to April 1, 2012. During this nine-month period, the relevant service plan required respondent to submit to random drug drops twice a month, visit K.S. as scheduled, submit five employment searches per week, and address and resolve her substance abuse problem.

¶ 32 The record shows that in August 2011, respondent was unsuccessfully terminated from an outpatient alcohol and drug treatment program for failing to attend. That same month, respondent was involved in an altercation at a bar and was so intoxicated that she was unable to tell police what happened. Also beginning in August, respondent stopped performing drug drops and never performed any again during the relevant nine-month period. In October 2011, respondent was issued

a ticket for and pled guilty to public intoxication. From January to April 2011, respondent failed to provide any employment searches as required by the service plan.

¶ 33 Nevertheless, respondent argues that she made reasonable progress because she completed some of the service plan goals, including obtaining her G.E.D., and regularly visiting K.S. While it is true that respondent made some slight progress during the nine-month period, that is not the same as "reasonable progress." See *A.C.B.*, 153 Ill. App. 3d at 708-709. At the end of the nine-month period, K.S. had been in foster care for almost three years. Still, respondent had failed to fulfill many of her service plan objectives, including participating in regular drug drops, completing employment logs and becoming free of drugs and alcohol. Because respondent failed to actively engage in many service plan directives from July 2011 to April 2012, the State proved by clear and convincing evidence that respondent failed to make reasonable progress and that an opposite conclusion is not clearly evident.

¶ 34

II. Termination

¶ 35 Respondent also argues that the trial court's finding that it was in K.S.'s best interest to terminate her parental rights was against the manifest weight of the evidence.

¶ 36 Once a trial court finds a parent unfit under one of the grounds of the Adoption Act, the court must consider whether it is in the best interest of the child to terminate parental rights. In re *A.F.*, 2012 IL App (2d) 111079, ¶ 45. At a best interest hearing, all parental rights must yield to the best interests of the child. In re *A.H., T.E.H. & A.H.*, 215 Ill. App. 3d 522, 531 (1991). The parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life. In re *D.T.*, 212 Ill. 2d 347, 364 (2004). The existence of a mother-child bond does not automatically insure that the child's best interests will be served by that parent. In re *K.H.*,

346 Ill. App. 3d 443, 463 (2004).

¶ 37 It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d at 367. The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010). A court may also consider the nature and length of the child's relationship with her present caretaker and the effect that a change in placement would have upon her emotional and psychological well-being. *In re Austin W.*, 214 Ill. 2d 31, 50 (2005).

¶ 38 On review, we will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *Id.* At 51-52. A finding is against the manifest weight of the evidence where a review of the record demonstrates that the opposite conclusion is clearly evident. *In re B.B.*, 386 Ill. App. 3d 686, 697-98 (2008).

¶ 39 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in K.S.'s best interest to terminate respondent's parental rights. K.S. was living with her aunt and uncle, the Fraims, who were meeting K.S.'s needs of food, shelter, clothing and health care. K.S. feels safe and secure in the Fraims' home and is doing well in school. She has developed a strong bond with the Fraims and their children. The Fraims are willing and able to adopt K.S.

¶ 40 Despite this evidence, respondent argues that it was not in K.S.'s best interest to terminate

her parental rights because she and K.S. have a mother-daughter bond. We disagree.

¶ 41 The existence of a mother-child bond does not trump the best interest considerations or preclude termination of a mother's parental rights. See *K.H.*, 346 Ill. App. 3d at 463. The evidence at the best interest hearing revealed that K.S. does not feel safe with her mother and does not want to live with her. On the other hand, she feels safe and secure with the Fraims, with whom she has lived for over three years. In light of the evidence presented, it was not against the manifest weight of the evidence for the court to terminate respondent's parental rights so that the Fraims could adopt K.S. and provide her a safe and stable home.

¶ 42

CONCLUSION

¶ 43 For the foregoing reasons, the judgment of the trial court of Peoria County is affirmed.

¶ 44 Affirmed.