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2013 IL App (3d) 130396-U

Order filed October 25, 2013

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2013

In re P.C.,)	Appeal from the Circuit Court
a Minor,)	of the 12th Judicial Circuit,
(THE PEOPLE OF THE STATE OF ILLINOIS,)	Will County, Illinois,
)	
Petitioner-Appellee,)	Appeal No. 3-13-0396
)	Circuit No. 09-JA-115
v.)	
)	
ADAM H.,)	Honorable
)	Paula Gomora,
Respondent-Appellant).)	Judge, Presiding.

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

ORDER

- ¶ 1 *Held:* Trial court did not err when it terminated father's rights based on father's failure to maintain reasonable concern, interest and responsibility for his son, where father had visited son only once in 16 months prior to termination hearings.
- ¶ 2 On the State's petition, the trial court found respondent father, Adam H., unfit and following a best interest hearing, terminated Adam's parental rights to P.C. We affirm the unfitness finding and the termination of Adam's parental rights.

¶ 3

FACTS

¶ 4 Adam's son, P.C., was born July 3, 2009. He was removed from his mother's custody in October 2009 based on an injurious environment after P.C.'s mother, Ashley C., left 5-month-old P.C. and 21-month-old J.C., home alone. P.C., J.C. and another half-sibling were placed in shelter care with their maternal great-grandmother. Adam did not live with Ashley and her children. The trial court entered an order to establish paternity. A Department of Children and Family Services (DCFS) service plan was entered for Adam in March 2010, which included the following tasks: demonstrate parenting skills learned during parent coaching during regular visitation; sign various releases; agree to participate in parent coaching with a certified provider; undergo an anger management assessment, follow its recommendations, and complete the recommended program; abide by the law and avoid arrests; participate in a substance abuse assessment and follow its recommendations; refrain from use of illegal drugs, alcohol and non-prescribed medication; and participate in random drug screens.

¶ 5 An April 2010 visitation plan established visitations on Saturdays at the foster home, to be supervised by a foster parent. Reports by the caseworker in May and June 2010 indicated that Adam maintained regular visitation but missed his court-ordered paternity test. He participated in an integrated assessment in May but missed a drug screen. Adam opted not to engage in any services because he was scheduled to begin serving an 18-month sentence in the Illinois Department of Corrections (DOC) and wanted to wait to begin services until his release. An August 2010 report informed that Adam missed a second paternity test but did ultimately comply in July. Paternity testing established Adam as P.C.'s father.

¶ 6 Based on the integrated assessment, Adam was asked to participate in individual counseling, anger management, parenting education, and a substance abuse assessment. He was referred for

counseling, anger management and parenting education but only attended the initial assessment and did not return for subsequent sessions. The foster parent reported that Adam continued to visit sporadically with P.C. A October 2010 report stated that Adam was referred for a substance abuse assessment and missed another drug screen. He continued sporadic visitation with P.C. but was not engaged in services. A September 2010 service plan reported that Adam refused to undergo substance abuse services but maintained weekly visits with P.C. A December 2010 permanency review report indicated that Adam was sent to the DOC that month.

¶ 7 In February 2011, the trial court found P.C. to be neglected based on an injurious environment and that Adam had made reasonable progress toward reunification. A March 2011 service plan reported unsatisfactory progress on all of Adam's required tasks and added tasks requiring Adam to comply with his parole terms after release from the DOC. A May 2011 dispositional report stated that Adam remained incarcerated. He was found dispositionally unfit in June 2011 and the trial court found services for reunification were unsuccessful. Adam was released from the DOC in August 2011. A September 2011 service plan report indicated Adam did not make reasonable efforts toward reunification , and failed to comply with his service tasks, except for substance abuse and anger management assessments. A permanency review report in October 2011 indicated that Adam participated in substance abuse and domestic violence assessments after his release. The report stated that Adam was to comply with all DCFS regulations and court recommendations and concluded that no further substance abuse or domestic violence treatment was needed. Per the report, Adam visited with P.C. on September 26, 2011, for the first time since his DOC release.

¶ 8 On October 11, 2011, following a permanency review hearing, the trial court found that Adam had made reasonable progress toward the goal of return home. It noted that the domestic violence

and substance abuse assessments did not recommend further treatment but directed Adam to comply with DCFS recommendations and regulations. In response to the trial court's inquiry, the caseworker responded that Adam's service plan required him to continue with drug screens and visitation and that he had been in compliance with those terms. A February 2012 permanency report informed that Adam participated in a substance abuse assessment, which determined "no further recommendations for treatment." The report stated Adam also participated in anger management, parenting and individual counseling, although his attendance was sporadic and he failed to make any progress in therapy. The therapist noted that Adam did not have any current active anger management issues but "struggles with family history, gang involvement, and alcohol and drug issues." The report also noted that Adam's visitation with P.C. was increased to a full day per week but that Adam had transportation difficulties and had not visited P.C. for approximately one month.

¶ 9 Following a March 2012 permanency hearing, the trial court found Adam failed to make reasonable progress. A June 2012 permanency report indicated Adam had not been in contact with P.C. or his caseworker between January and May 2012, when Adam left a message that he had received certified letters the caseworker sent because she was unable to contact him. The report further indicated that Adam generally failed to make satisfactory progress. The permanency order stated that the goal was changed to substitute care pending termination of parental rights.

¶ 10 The State filed a motion to terminate Adam's parental rights on June 19, 2012. It alleged that Adam was an unfit parent in that he:

- "a) *** failed to maintain a reasonable degree of interest, concern and responsibility as to the child's welfare, pursuant to 750 ILCS 50/1D(b);

- b) *** failed to make reasonable efforts to correct the conditions which were the basis for the removal of the child, pursuant to 750 ILCS50/1D(m)(I);
- c) *** failed to make reasonable progress towards the return of the child to such parent within 9 months after an adjudication of neglected or abused minor child ***[,] specifically from February 15, 2011 through November 15, 2011.”

Adam participated in a July 2012 visit with P.C. A November 2012 caseworker report to the court indicated that Adam missed a scheduled visit with P.C. in September and had not called to reschedule or inquire about P.C., although Adam “reports that he is interested in being reunited with his son.

¶ 11 A trial took place on the petition to terminate. The foster care supervisor, current caseworker and CASA case manager testified. Following presentation of the State’s case, Adam moved for a directed verdict, which was granted as to paragraphs b) and c) of the petition. Adam testified he regularly visited with P.C. when P.C. lived with his maternal great-grandmother and prior to Adam’s incarceration. When he was in the DOC from November 2010 to August 2011, his caseworker brought P.C. to Stateville for visits approximately four times. After his release, Adam visited P.C. every two to three weeks through December 2011. He had maintained a room for P.C. at his home and bought Christmas gifts for P.C. every year, which he was storing at his home. Adam did not call P.C. on the phone because he did not want to intrude on the foster parents, although he did make two calls to the foster parents in 2012. Adam did not file a petition for custody because he did not understand his rights but he wanted to have visitation with or custody of P.C. He lost his driver’s license because he kept driving after being medically prohibited from driving due to seizures caused

by a brain tumor. He was in the process of getting his license back. His caseworker told him that he was not required to continue anger management or parenting classes but he did so voluntarily until he was regularly tardy and dropped from the classes. He understood that he was finished with his service tasks. Adam felt for each step forward, he moved three steps back in his attempts to be reunified with P.C.

¶ 12 On April 17, 2013, the trial court found Adam unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to P.C.'s welfare. It noted Adam had visited P.C. only seven times in two years, and did not visit P.C. at all from July 2012 to April 2013. Adam failed to call, send cards, gifts or letters to P.C. He did not file a petition for custody or pay child support. The trial court found that Adam's lack of visitation with P.C. constituted clear and convincing evidence that Adam failed to maintain a reasonable degree of interest, concern or responsibility. After a best interest hearing on May 17, 2013, the trial court found it was in P.C.'s best interest that Adam's parental rights be terminated. Adam appealed the termination order, challenging only the unfitness finding.

¶ 13 ANALYSIS

¶ 14 On appeal, Adam challenges the trial court's finding that he was unfit and argues that termination was improper on that ground. Adam argues that his failure to visit P.C. was the result of personal issues and not indifference to his son. He points to his lack of transportation and what he claims are DCFS errors regarding his service plan compliance as factors negatively affecting his visitation with P.C. He also contends the trial court miscalculated the number of times he visited P.C. and did not credit him for all his visits. Adam further contends that the foster parents and other individuals, as well as his parole terms, hindered his ability to visit P.C.

¶ 15 The Juvenile Court Act of 1987 sets forth a two-step process for the termination of parental rights. 705 ILCS 405/2-29(2) (West 2010). The trial court must first find the parent is unfit, and after finding unfitness, the trial court must determine whether it is in the child's best interest to terminate parental rights. 750 ILCS 50/1(D) (West 2010); 705 ILCS 405/2-29(2), (4) (West 2010). Grounds for unfitness include the parent's "failure to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (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.

¶ 16 To determine whether a parent has demonstrated reasonable concern, interest or responsibility as to his child's welfare, the court considers the parent's efforts to visit and maintain contact with the child, his inquiries into the child's welfare, and other indicia of interest. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). A parent's completion of his service tasks and attendance at court proceedings are also evidence of the parent's interest. *Daphnie E.*, 368 Ill. App. 3d at 1065. When a parent is unable to visit, he can show reasonable concern, interest and responsibility through letters, phone calls, and gifts. *In re Gwynne P.*, 346 Ill. App. 3d 584, 591 (2004). A court should consider the parent's efforts to show interest in and communicate with the child, not the success of the efforts. *Daphnie E.*, 368 Ill. App. 3d at 1065. The trial court must look at the parent's conduct regarding the child in light of the parent's circumstances. *In re Syck*, 138 Ill. 2d 255, 278 (1990). Circumstances relevant to determining whether a parent's failure to visit his child establish a lack of concern include any difficulty the parent has in obtaining transportation to visitation, the parent's poverty, actions and

statements by others that hinder or discourage visitation, and whether the parent's failure to visit was due to other life conditions rather than an indifference to the child. *Syck*, 138 Ill. 2d at 278-79.

¶ 17 The trial court found that Adam's lack of visitation with P.C. constituted clear and convincing evidence that he failed to maintain a reasonable degree of interest, concern and responsibility for P.C. We agree. Adam saw P.C. once from December 2011 to May 2013. Even considering Adam's circumstances, including lack of transportation and other life issues facing Adam, this failure to visit P.C. for the extended period of time evidences a lack of reasonable interest, concern and responsibility. The caseworker and Court Appointed Special Advocate (CASA) notes indicate Adam's transportation difficulties, but as the trial court noted, Adam did not seek assistance from the court and the case notes do not state that he sought assistance from his caseworker or his CASA advocate either. Moreover, he was able to secure transportation to his court dates and to his job. Adam complained of the price of gas as a hindrance to visitation, but it appears that he obtained full-time employment after his release from prison, and he offered no evidence of lack of financial resources. We acknowledge that Adam's parole conditions also limited his ability to visit P.C. but he managed somewhat regular visitation between his release in August 2011 and December 2011. His parole successfully concluded in August 2012, and his visits with P.C. after that time did not increase in frequency but ceased to occur. We also acknowledge Adam's reluctance to contact the foster parents, who are P.C.'s maternal grandparents, but do not find his discomfort to outweigh his efforts to maintain contact with his son. Adam called P.C. only two times at the foster home and did not speak to his son during those calls. Although he asserts he called his caseworker several times with no response, the record does not demonstrate Adam made any contact with the caseworker to inquire about P.C.'s well-being. Adam did not send letters, cards or gifts. Adam asserts that he

bought gifts regularly for P.C. but kept them at his house and never gave them to P.C. He also asserts that he had a room prepared for P.C. but he did not follow through with DCFS to arrange home visits.

¶ 18 We further acknowledge Adam's early efforts in visiting P.C., albeit inconsistently, and his attempts to participate in his service plan after his release from prison. Nevertheless, after December 2011, Adam's efforts to remain in P.C.'s life lessened substantially. He stopped engaging in service tasks. Adam testified that he voluntarily participated in anger management and parenting classes, in contrast to the service plans which indicate unsuccessful completion of the tasks. Adam acknowledged that he started arriving late for the classes due to lack of interest since he believed they were no longer required. According to Adam, beginning in February 2012, the caseworker began incorrectly reporting his progress as unsuccessful, which caused him to become discouraged. In our view, even if we were to assume the caseworker erroneously reported Adam's progress, he still failed to exercise visitation with P.C. after December 2011, except once in July 2012. The service plan also required Adam undergo to drug screens, which he failed to do.

¶ 19 The record reveals that Adam had a second child in February 2012. However, the responsibilities of a new child cannot override or negate his responsibilities to P.C. Adam did not file a petition for custody of P.C. or contribute to his support. He was out of contact with DCFS for a five-month period during early 2012 and then kept only one scheduled visitation in July 2012. A visit scheduled in September 2012 did not occur due to Adam's failure to confirm it in advance. As emphasized by the trial court, it was Adam's lack of efforts to visit P.C. that most strongly evidenced his failure to maintain a reasonable degree of interest, concern and responsibility for P.C.'s welfare, not a failure to comply with his other service tasks. Accordingly, we find that the trial court's determination that Adam was an unfit parent and its termination of Adam's parental rights due to his

unfitness was not against the manifest weight of the evidence.

¶ 20 For the foregoing reasons, the judgment of the circuit court of Will County is affirmed.

¶ 21 Affirmed.