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2013 IL App (3d) 130481

Order filed December 2, 2013

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2013

In re J.K., a Minor,	)	Appeal from the Circuit Court
	)	of the 12th Judicial Circuit,
(The People of the State of Illinois),	)	Will County, Illinois,
	)	
Petitioner-Appellee,	)	
	)	Appeal No. 3-13-0481
	)	Circuit No. 08-JA-36
v.	)	
	)	
JAMES K.,	)	Honorable
	)	Paula Gomora,
Respondent-Appellant.	)	Judge, Presiding.

JUSTICE HOLDRIDGE delivered the judgment of the court.
Presiding Justice Wright and Justice Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that the respondent was an unfit parent was not against the manifest weight of the evidence or the result of ineffective assistance of counsel.

¶ 2 Respondent, James K., appeals from an order of the circuit court finding him to be an unfit parent of J.K. (born October 14, 2007) and terminating his parental rights. Respondent contends that: (1) the trial court's finding that he was unfit was against the manifest weight of the

evidence; and (2) but for his counsel's ineffective assistance the trial court would have ruled otherwise. For the following reasons, we affirm the judgment of the circuit court.

¶ 3 BACKGROUND

¶ 4 On August 27, 2012, the People filed a petition seeking to terminate the respondent's parental rights. A hearing was held on the petition on March 19, 2013. On April 5, 2013, the court entered an order finding the respondent to be an unfit parent and on June 20, 2013, the court entered an order terminating the respondent's parental rights. Respondent appealed the finding of unfitness. The following facts are found in the record.

¶ 5 J.K. was born on October 14, 2007. On January 10, 2008, the Department of Children and Family Services (DCFS) received a complaint regarding J.K.'s mother, Amanda, who was the subject of proceedings regarding two older children. A shelter care hearing was held on March 13, 2008, at which time J.K was placed in the protective custody of DCFS. Although the respondent had not been confirmed as the biological father of J.K., he was made a party the petition alleging that J.K. was subjected to an injurious environment. The respondent was subsequently determined by genetic testing to be the natural father of J.K.

¶ 6 An adjudicatory hearing was held on August 19, 2008, at which the respondent and Amanda stipulated that she was drug dependant and that J.K. was subjected to an injurious environment. An uncontested dispositional hearing was held on March 19, 2009, at which time the minor was placed in DCFS custody with a established goal of return to home within 12 months. On September 2, 2009, a report filed by Catholic Charities indicated that the respondent had completed recommended parenting and domestic violence classes and had been discharged

from individual therapy sessions. The report also indicated that the respondent attended weekly supervised visitation, although at times he lacked engagement with the child.

¶ 7 Review hearings were held periodically. On March 18, 2010, an updated Catholic Charities report indicated that the respondent had progressed appropriately toward the reunification goal and had been caring for a child born to he and Amanda in September 2009. The report also indicated improvement in the respondent's interaction with J.K. during supervised visitations, which had been increased to twice-weekly sessions. The report also included a recommendation that the respondent and Amanda be permitted unsupervised visitation with J.K.

¶ 8 At a review hearing on May 10, 2010, Catholic Charities reported that the respondent and Amanda continued to progress and again recommended unsupervised visitation. A court appointed special advocate (CASA) concurred in the recommendation of unsupervised visitation. On May 25, 2010, the court granted DCFS discretion to proceed with unsupervised visitation in accordance with the recommendation of Catholic Charities.

¶ 9 On July 11, 2011, Catholic Charities issued an updated report indicating that both parents were in compliance with all plan requirements. The report included an observation that the foster parents appeared to be taking steps to impede the progress of the planned return of J.K. to the natural parents. A report by CASA echoed the concerns regarding the actions of the foster parents.

¶ 10 On July 15, 2011, DCFS removed J.K. from the foster home due to the failure of the foster parents to support the goal of returning the child to the home of the natural parents. The

child was placed in a different foster home. However, following an administrative hearing, that decision was reversed and J.K. was returned to the original foster home.

¶ 11 At a review hearing held on September 13, 2011, it was reported that the respondent and Amanda had ceased visitation with J.K. and contact with Catholic Charities in approximately mid-August.

¶ 12 At a review hearing held on April 23, 2012, it was reported that there had been no contact with the respondent or Amanda in several months.

¶ 13 At a review hearing held on June 13, 2002, it was reported that the respondent had not attended visitation with J.K., nor had there been any contact with caseworkers. The case plan filed with the court indicated that a goal of return to home was no longer feasible due to the fact that the whereabouts of the respondent and Amanda were unknown.

¶ 14 On August 27, 2012, the State filed a motion to terminate the respondent's parental rights, alleging that he had failed to maintain a reasonable degree of interest, concern or responsibility as to J.K.'s welfare and had failed to make reasonable efforts to correct the conditions that formed the basis for the child's removal. On September 25, 2012, both parents were found in default and the termination order was entered.

¶ 15 On October 12, 2012, the respondent filed a *pro se* motion to vacate the default order, indicating that he had missed the hearing due to work. Counsel was appointed for the respondent, and the default order was vacated as to the respondent on October 19, 2012. The order remained as to Amanda, who is not a party to this appeal.

¶ 16 On March 19, 2013, the petition to terminate the respondent's parental rights proceeded to a hearing on the allegation that he failed to maintain a reasonable degree of interest, concern or

responsibility as to J.K.'s welfare. Sister Veronica Michalski, the respondent's caseworker since October 2011 testified that the respondent stopped contacting her in December 2011. Sister Michalski testified that between December 26, 2011, and August 13, 2012, the only communication she had with the respondent was two voice mails he left for her, one in January and one in February. In neither recording did the respondent provide his telephone number or other way for her to communicate with him. Sister Michalski also testified that the respondent last visited with J.K. on December 19, 2011, at which time he showed little interaction with the child. A visit had been scheduled for February 24, 2012, but was cancelled by the case aide. The respondent did not attempt to schedule a follow-up to the canceled visitation. The only other visit occurred in August 2012.

¶ 17 Sister Michalski testified that she found out that from other sources that the respondant had been evicted from his last known residence and had in April 2012 he was living in a motel. She reported going to the hotel to talk to the respondent in May 2912, but the subject of visitation with J.K. was not addressed. She further testified that sometime in August 2012, the respondent moved into an apartment in Joliet and resumed visitation.

¶ 18 The respondent testified that he lost his employment and was evicted in October 2011. He testified that he became homeless and did not attempt to have contact with J.K. at that time because he was barely surviving, did not have any money or vehicle, did not have a phone, and did not think he could care for or support his children. He further testified that as a result of losing his job and becoming homeless he had lost all self-esteem and "hit rock bottom." He testified that he made one attempt to have visitation with J.K. in February 2012. On crossexamination, the respondent explained that he did not leave a contact number in his voice

mails to Sister Michalski because assumed that she had caller identification on her phone. He admitted that he obtained employment in January of 2012, and that he had access to his mother's telephone and car, yet made no attempt to contact anyone regarding J.K. The respondent further testified that he received a workers' compensation settlement in August 2012 and purchased a residence in Joliet, at which time he sought to resume visitation with J.K.

¶ 19 The State marked two exhibits which were admitted into evidence: Exhibit 1 being a 63 page case plan dated May 5, 2012; and Exhibit 2 being a 100 page bundle of case notes and visitation records. The respondent's counsel did not introduce any documentary evidence pertaining to the period from March 13, 2008, through October 13, 2011.

¶ 20 On August 13, 2012, the trial court found by clear and convincing evidence that both the respondent and Amanda were unfit in that they each failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. Regarding the respondent, the court noted that he had made no effort to or attempts at visitation with J.K. from December 20, 2011, through July 26, 2012. The court found it to be particularly indicative of a lack of interest, concern or responsibility that the respondent did not leave contact information on the two occasions when he left messages for Sister Michalski. In addition, the court noted that the respondent made no attempts during these seven months to communicate with J.K. by way of cards, gifts or letters.

¶ 21 The matter proceeded to a best interest hearing on June 20, 2013, at which the trial court held that the State proved by a preponderance of the evidence that it was in the best interest of J.K. that the respondent's parental rights be terminated. On appeal, the respondent does not

challenges the best interest determination but challenges the trial court's finding that he was unfit.

ANALYSIS

¶ 22 A. Fitness Determination

¶ 23 The Juvenile Court Act provides a bifurcated system in which parental rights can be terminated. 750 ILCS 405/2-29(2) (West 2010). There must be a showing of parental unfitness based upon clear and convincing evidence, and then a showing that the best interests of the child are served by severing parental rights. *In re Konstantinos H.*, 387 Ill. App. 3d 192, 203 (2008). A finding of unfitness will stand if supported by any one of the statutory grounds set forth in section 1(D) of the Adoption Act. *In re Jacorey S.*, 2012 IL App (1st) 113427 ¶ 19. A trial court's determination that a parent is unfit will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re D.D.*, 196 Ill. 2d 405, 417 (2001). For a finding to be against the manifest weight of the evidence, the opposite conclusion must be clearly evident from the review of the evidence. *Id*. The standard of proof to be applied by the trial court in determining parental unfitness is whether the proposition has been proven by clear and convincing evidence. *Id*. On review, we must give the factual findings of the trial court great deference since it had the opportunity to view and evaluate the testimony of all witnesses. *In re K.H.*, 346 Ill. App. 3d 443, 456 (2004). Because each case concerning parental unfitness is *sui generis*, requiring a close analysis of its individual facts, factual comparisons to other cases are of little value. *Konstantinos H.*, 387 Ill. App. 3d at 203.

¶ 24 The respondent was found to be unfit due to his failure to maintain a reasonable degree of interest, concern, or responsibility as to J.K.'s welfare. 750 ILCS 50/1(D)(b) (West 2010). Where the termination petition alleges that a respondent failed to maintain a reasonable degree of

interest, concern, or responsibility as to the minor's welfare, the trial court will consider the parents's efforts to visit and maintain contact with the minor as well as his inquiries into the child's welfare. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064 (2006). The degree of interest, concern, or responsibility shown by the parent must be objectively reasonable. *In re M.J.*, 314 Ill. App. 3d 649, 657 (2000). In determining the objective reasonableness of a parents interest or concern, courts consider the parent's conduct in the context of the circumstances, including any difficulty in obtaining transportation, the parent's poverty, the conduct of others that might hinder visitation, and the motivation underlying the failure to visit. *In re Adoption of Syck*, 138 Ill. 2d 255, 278-79 (1990). In addition to personal visits, courts also consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts. *Syck*, 138 Ill. 2d at 279. Cooperation with social service agencies and service plan objectives can also be considered evidence of a parent's concern, interest, and responsibility. *In re Jaron Z.*, 248 Ill. App. 3d 239, 259 (2004). Courts will also consider the parent's efforts which show interest in the child's well-being, even if those efforts were not successful. *Syck*, 138 Ill. 2d at 279.

¶ 25 Here, the record clearly established that the respondent had failed to maintain an objectively reasonable degree of interest, concern, or responsibility regarding J.K.'s welfare. For over eight months the respondent severed all contact with the caseworker managing his case. When he left a voice message, he failed to leave a contact number. His rationale for doing so, that he assumed that the caseworker had caller identification, was rejected by the trail court. We cannot say that the trial court's finding was against the manifest weight of the evidence. It is not objectively reasonable that a person seeking to show interest, concern, or responsibility for his

child's welfare would not leave a contact number when he left a voice recorded message with the child's caseworker. The record also established that the respondent did not visit with J.K. for over eight months. His rationale for not attempting visitation, that he could not afford transportation and felt a sense of shame for being homeless, was contradicted by his own testimony on crossexamination where he admitted to being employed during the this period and to having access to his mother's car.

¶ 26 In addition to the lack of personal visitation by the respondent, we also find support for the trial court's ruling in the fact that the respondent made no attempt by any means to communicate with J.K. for over eight months. A reasonable degree of interest, concern, and responsibility can be demonstrated by letters, cards, phone calls, and gifts sent to the child. *Syck*, 138 Ill. 2d at 279. Here, the respondent made no effort to communicate with J.K. in any of these methods for over eight months. Again, the respondent explains that he was not in a position to communicate with J.K. during this period due to his lack of work and inadequate feelings due to his homelessness. This explanation was given little credence by the trial court and we cannot say that the court's findings were against the manifest weight of the evidence. The record established that the respondent knew how to get in contact with the caseworker and that he could have sent cards, letters or gifts through the caseworker. Yet, he made no attempt to do so. Simply put, the record established that the respondent made no attempt to communicate with J.K. in any manner for a period of more than eight months. We also note that the visitation records admitted into evidence regarding the respondent's prior visitation with J.K. established that the respondent did not engage in much interaction with the child when he did have visitation in the months prior to October 2011. Given this record, the trial court's finding that this conduct did not establish an

objectively reasonable degree of interest, concern, or responsibility for the child's welfare is not against the manifest weight of the evidence.

¶ 27 B. Ineffective Assistance

¶ 28 The respondent also maintains that the his counsel was ineffective for failing to present evidence of his interaction with J.K. during the period of time before he went absent in October 2011. To prevail on a claim of ineffective assistance of counsel in a termination of parental rights proceeding, a parent must establish that: (1) trial counsel's performance fell below an objective standard of reasonableness, and (2) that counsel's deficient performance so prejudiced the parent that but for counsel's errors, the parent's parental rights would not have been terminated. *In re A.J.*, 323 Ill. App. 3d 607, 611 (2001). A court need not determine whether counsel's performance was deficient if it can dispose of an ineffectiveness claim where there is a failure to show that the parent was prejudiced by counsel's allegedly deficient performance. *Id.*

¶ 29 In order to show prejudice, the respondent must show that, but for counsel's performance, the outcome of his case likely would have been different. *Id.* Respondent maintains that his attorney was ineffective in failing to present evidence that he exhibited a reasonable degree of interest, concern and responsibility toward J.K. at all times prior to October 2011, and that had counsel done so the trial court would have viewed the totality of his efforts more favorably.[1] He

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[1] While counsel did not present direct evidence of the respondent's actions prior to October 2011, the record contained reports covering the period prior to October 2011, which showed respondent's efforts prior to October 2011. This information was available to the trial court prior to its ruling on the respondent's parental fitness.

maintains that when a court determines fitness it "must look not to the conduct of the parent during any single, isolated period of time, but to the conduct of the parent over the entire period of time in question, that is, to the entirety of the parent's conduct." *Adams v. Adams*, 103 Ill. App. 3d 126, 132-33 (1982).

¶ 30 While the respondent is correct in his observation that isolated periods of time wherein atypical behavior occurs cannot outweigh an overall showing of interest, concern or responsibility for the child's welfare, such is not the case in the instant matter. The facts here do not establish a pattern of interest and concern was interrupted by brief periods of lack of contact. See *In re N.H.*, 175 Ill. App. 3d 343, 345-47 (1988). The record also does not show a brief period of lack of interest at the time the child was born followed by regular visitation and displays of interest thereafter. See *In re S.J.*, 233 Ill. App. 3d 88, 109-111 (1992). Here, the respondent essentially broke off all attempts at communication with the child for over eight months. This fact alone overwhelmingly supports the trial court's finding that the respondent failed to show an objectively reasonable degree of interest, concern or responsibility for the welfare of J.K. Given the respondent's unreasonable actions in failing to show interest in J.K., we are convinced that even if counsel would have presented evidence of the respondent's efforts to communicate with J.K. prior to October 2011, the outcome would not have been different. We conclude, therefore, that the respondent's counsel was not ineffective.

¶ 31 CONCLUSION

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

¶ 33 Affirmed.