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2013 IL App (4th) 130244-U

NO. 4-13-0244

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
July 23, 2013
Carla Bender
4th District Appellate
Court, IL

In re: S.W., a Minor,)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,)	Circuit Court of
Petitioner-Appellee,)	Macon County
v.)	No. 10JA153
TWYLA WILEY,)	
Respondent-Appellant.)	Honorable
)	Thomas E. Little,
)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Appleton and Turner concurred in the judgment.

ORDER

¶ 1 *Held:* The trial court's findings respondent is unfit and termination of respondent's parental rights is in the best interest of the minor are affirmed.

¶ 2 Following a fitness hearing on February 4, 2013, the trial court found respondent unfit to parent S.W., born November 4, 2010. On March 21, 2013, the court held a best-interest hearing and thereafter terminated respondent's parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In November 2010, the State filed a two-count petition alleging S.W., then five days old, was neglected and abused. The trial court placed S.W. in shelter care on November 9, 2010. On August 17, 2011, respondent stipulated S.W. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)) as alleged in count I because S.W.'s environment was injurious to his welfare as a result of respondent having

another child in care, her repeated threats to harm her unborn child, and her mental health issues. Count II was dismissed. That same day, the court held the dispositional hearing and adjudicated S.W. a ward of the court and placed him with the Illinois Department of Children and Family Services (DCFS). In June 2012, the trial court approved the transfer of physical custody of S.W. to his father, who had undertaken and completed recommended services.

¶ 5 In October 2012, the State filed a motion seeking a finding of unfitness and termination of respondent's parental rights to S.W. The motion alleged six separate grounds of unfitness.

¶ 6 In February 2013, the trial court held the fitness hearing. Debbie Cox Schwalbe testified she had been respondent's therapist off and on for 1 1/2 years. During therapy, the primary goal was to address respondent's coping skills. Respondent had unstable partner relationships and unstable and erratic behaviors. Respondent was not consistent with her attendance and made minimal progress. Schwalbe closed respondent's case in May of 2012 for nonattendance and had no contact with respondent after that.

¶ 7 Angie Latham testified she was a placement counselor with Lutheran Social Services of Illinois (LSSI) and worked with respondent. She developed a service plan that called for parenting classes, counseling, and mental health services to be completed. In addition, respondent was required to have stable housing, appropriate hygiene, and a job. The plan also called for respondent to attend visits and obtain a psychological assessment.

¶ 8 Latham stated respondent completed a parenting class but not counseling. She never had appropriate housing because she either resided with a man or in shelters. Respondent was currently living with a man who had an order of protection against her. Respondent had

never been employed since Latham began working with her. Her visits with S.W. were sporadic. Respondent did attend the psychological assessment. She had accomplished only two of seven goals since November 2010. Respondent met men on the Internet who were quite a bit older than her and would "take up with them." During visits with S.W., respondent would spend her time talking to other people rather than focusing on S.W. Latham said S.W. would be running around and respondent would need to be redirected to pay attention and stop talking about her personal life.

¶ 9 Latham testified respondent was in jail in October 2011 and that was the last she had heard from respondent until March 2012. In March 2012, respondent "just appeared" and said she wanted to start services. There had been an open case involving S.W.'s sibling, S.M., for three years at the time of the fitness hearing. Latham stated it would not be safe for S.W. to return home to respondent, nor would it be possible for respondent to complete her services in the next six-to-nine months. Her opinion was based on respondent's overall progress during the past three years and respondent's instability.

¶ 10 Delois Conner testified she supervised visits between respondent and S.W. for 2-1/2 years. The visits were sporadic and chaotic. During every visit, Conner had to redirect respondent to focus on S.W. and stop talking about her personal life. Conner testified she would not be comfortable returning custody to respondent at the time of the fitness hearing.

¶ 11 At the request of the State, the trial court then took judicial notice of S.M.'s juvenile case, without objection. The State informed the court as it was starting to produce evidence on termination in S.M.'s case, respondent surrendered her rights to S.M. Respondent presented no evidence.

¶ 12 The trial court found the State proved respondent unfit by clear and convincing evidence on four of the six grounds alleged, including her failure to make reasonable progress toward the return of S.W. within nine months after the adjudication. See 750 ILCS 50/1(D)(m)(ii) (West 2010). (We note the written judgment does not conform to the court's oral findings, but rather included two grounds the court did not find to be proven.)

¶ 13 At the March 21, 2013, best-interest hearing, Latham testified S.W. was still with his father, who had completed all his services, and was doing well. She filed a best-interest report with the court on March 18, 2013. The report reflects respondent had not engaged in services during the prior six months and was not employed. Since the report had been drafted, respondent had moved into a hotel for a week and then had gone to a shelter.

¶ 14 Respondent testified she tried to the best of her ability to work on her service plan. She was living at House of Hope, a shelter, and attending her second semester at Richland Community College. Respondent testified she was willing to do the counseling necessary to get S.W. back. If the trial court decided not to return S.W. to her, she wanted him to be placed with his great-grandmother, who was the foster parent of S.M.

¶ 15 The trial court, in announcing its ruling, stated it had considered the statutory best-interest factors outlined at 705 ILCS 405/1-3(4.05) (West 2010). The court found the most applicable factors in this case to be the child's sense of attachment, the child's need for permanency, including the child's need for stability and continuity with relationships with parental figures. The court found S.W.'s father had completed the terms of his service plan and was meeting minimum parenting standards. S.W. was thriving in his father's care and had been living with his father since June 2012. All of his needs were being met. The court also referred

to the Court Appointed Special Advocate (CASA) report that reflected S.W. was considered by the staff at his daycare center to be bright, active, and age-appropriate. The daycare staff also commented positively on S.W.'s interaction with his father. The court found the State had proved by a preponderance of the evidence it was in S.W.'s best interest to terminate respondent's rights. Respondent filed a timely notice of appeal.

¶ 16

II. ANALYSIS

¶ 17 Respondent contends the trial court's findings regarding her unfitness and terminating her parental rights were against the manifest weight of the evidence. We disagree and affirm.

¶ 18

A. The Trial Court's Fitness Determination

¶ 19 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). "A finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident." *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 20

Here, the trial court found respondent unfit for, *inter alia*, failing to make reasonable progress during the nine-month period following adjudication, *i.e.*, August 18, 2011, to May 18, 2012. Reasonable progress is an objective standard which focuses on the amount of

progress toward the reunification goal that can reasonably be expected. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999); *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991). Respondent had no contact with her caseworker whatsoever for nearly six of those nine months, from October 2011 to March 2012. Respondent was not close to completing her service plan and had stopped seeing her counselor. She had only completed two of the seven goals set forth in her service plan. She did not have stable housing or employment and persisted in meeting and living with strange, older men she met on the Internet. The evidence clearly and convincingly demonstrated respondent's failure to make reasonable progress during the nine months following adjudication. The court's finding of unfitness was not against the manifest weight of the evidence.

¶ 21 B. The Trial Court's Best-Interest Determination

¶ 22 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2010); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). The trial court conducts the best interest hearing using a preponderance of the evidence standard of proof. *In re D.T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs[.]" 705 ILCS 405/1-3(4.05) (West 2010). These include the following:

"(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]

disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

The trial court's best-interest determination is reviewed under the manifest-weight-of-the-evidence standard. *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 23 The trial court found all of S.W.'s needs were being met in the home of his father. S.W. was thriving there and had stability. Even visitation with respondent would be problematic in the future, as she persisted in living with men she met online or in shelters. It was clearly evident she would not become fit anytime in the near future. Her erratic behavior and mental health issues served as barriers to a stable relationship with S.W., as did her unwillingness or inability to complete services. As a result, S.W. had never lived with respondent.

¶ 24 The trial court's finding it was in S.W.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 25 III. CONCLUSION

¶ 26 We affirm the trial court's finding of unfitness and its decision to terminate

respondent's parental rights.

¶ 27 Affirmed.