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2014 IL App (3d) 140346-U

Order filed September 17, 2014

IN THE  
APPELLATE COURT OF ILLINOIS  
THIRD DISTRICT

A.D., 2014

<i>In re</i> T.G., M.H. and T.B., Minors	)	Appeal from the Circuit Court
	)	of the 14 Judicial Circuit,
PEOPLE OF THE STATE OF ILLINOIS	)	Rock Island County, Illinois,
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-14-0346, 3-14-0347
	)	and 3-14-0348
v.	)	Circuit Nos. 10-JA-22, 10-JA-23
	)	and 10-JA-166
SHARON B.	)	
	)	The Honorable
Respondent-Appellant.	)	Peter W. Church,
	)	Judge, presiding.

JUSTICE MCDADE delivered the judgment of the court.  
Presiding Justice Lytton and Justice Schmidt concurred in the judgment.

**ORDER**

- ¶ 1 *Held:* We will not disturb a circuit court's finding of parental unfitness unless it is against the manifest weight of the evidence.
- ¶ 2 Respondent, Sharon B., appeals the circuit court's order finding her unfit to parent her minor children T.G., M.H. and T.B. We affirm.

¶ 3 **FACTS**

¶ 4 Respondent is the mother of T.G., M.H., and T.B. Tremaine G. (Tremaine) is the father of T.G. On January 29, 2010, the State filed a juvenile petition alleging that T.G. and M.H. were neglected due to an injurious environment. The petition alleged that Tremaine battered two people in the residence where respondent, Tremaine and the children were living. M.H. witnessed the incident. On April 16, 2010, T.G. and M.H. were adjudicated neglected and a dispositional order was entered on the same day requiring respondent to complete certain services.

¶ 5 On September 2, 2010, the State filed a neglect petition alleging T.B. was neglected due to an injurious environment. On December 28, 2010, T.B. was adjudicated neglected and a dispositional order was entered consistent with the previous dispositional order.

¶ 6 The dispositional orders required respondent to (1) obtain a mental health evaluation and treatment, if required, (2) complete a parenting class, (3) undergo a domestic violence evaluation, and then follow any recommendations, (4) maintain satisfactory housing, (5) obtain a stable form of employment to support her children, and (6) successfully work through her probation.

¶ 7 Permanency orders reflecting that respondent had been making reasonable progress toward reunification were entered on October 22, 2010, April 5, 2011, October 4, 2011, and January 29, 2013. However, permanency orders reflecting that respondent had not been making reasonable progress toward reunification were entered on April 13, 2012, October 16, 2012, and July 9, 2013.

¶ 8 On August 8, 2013, the State filed a supplemental petition to terminate respondent's parental rights for: (1) failure to make reasonable progress during a nine-month time period (March 8, 2012, through December 8, 2012), and (2) for failing to maintain a reasonable degree

of interest, concern, or responsibility as to the welfare of the children. Specifically, the petition alleged respondent: (1) allowed Tremaine to reside in her residence and/or be in the physical presence of herself and the minor in violation of an order of protection, (2) was involved in a domestic dispute with Tremaine on March 8, 2012, in which the police were called to the residence, (3) failed to obtain protective daycare for the children after the return home despite being given several sets of paperwork for Department of Children and Family (DCFS) Services payment, (4) failed to obtain a physical examination of the children after the return home, (5) failed to obtain steady employment and income, (6) continued to have contact with Tremaine, and (7) failed to seek psychiatric care after a referral to the Robert Young Center. The following evidence was adduced at the fitness hearing. We only discuss evidence relevant to the applicable nine-month period (March 8, 2012, through December 8, 2012).

¶ 9 Two independent orders of protection (OP) respondent had secured against Tremaine were admitted into evidence. One OP had been dismissed for lack of prosecution. The other, which was in effect on March 8, 2012, was dismissed on July 15, 2013.

¶ 10 Sherri-George-McHugh testified that she was the caseworker for the family from November 23, 2011, to September 22, 2012. McHugh stated that police officers were dispatched to respondent's residence on March 8, 2012, because Tremaine tried to enter the residence in violation of the OP. Tremaine was apprehended at respondent's residence, gave respondent's address as his, and admitted that he had been living with respondent. Respondent also admitted that Tremaine was living at the residence. She told the officers that she had only obtained an OP against Tremaine because Lutheran Social Services required it in order to have her children returned to her. The children were removed from respondent's residence on March 9, 2012, because of this incident.

¶ 11 McHugh filed a court report, which covered the period from the end of March 2012 to the end of September 2012. Respondent's visitation with the children during this time was sporadic. McHugh tried to meet respondent on several occasions to set up a firm visitation schedule, but respondent failed to show up for the meetings.

¶ 12 Although respondent had previously completed individual counseling, McHugh requested that she resume counseling because of the March 8, 2012, incident. Two months later (June 2012), respondent re-engaged in counseling, however, she abruptly stopped attending counseling in August 2012. Respondent was referred to the Robert Young Center for psychiatric services, however, McHugh could not remember if respondent engaged in these services.

¶ 13 Respondent was not employed during the six-month period covered in McHugh's report, however, she was volunteering at a local church. She did have stable housing. McHugh had difficulty reaching respondent by phone during this six-month period. She stated respondent's phone was frequently turned off and she would have to leave notes on respondent's door or give messages for respondent to the foster mother. Respondent called the foster mother from Tremaine's telephone on at least one occasion. McHugh opined that during her tenure as respondent's caseworker, the children were no closer to returning home to respondent than when they had been removed on March 9, 2012.

¶ 14 Alyse Egan testified that she was the caseworker for the family from the end of September 2012 to March 13, 2013. She filed a court report that covered the period from September 27, 2012, to January 11, 2013. Respondent was to visit the children for one hour on Tuesday and one hour on Thursday. Egan stated that there were weeks that respondent would visit the children and some weeks she would not. She described visitation as inconsistent.

¶ 15 Egan was very concerned over the fact that respondent remained in contact with Tremaine. The foster mother reported to Egan that had Tremaine punched respondent in September 2012. The foster mother also received a call from respondent using Tremaine's telephone. Respondent failed to complete a “coping” skills class, and she did not attend individual counseling intended to address the domestic violence issues. She also never attended any psychiatric evaluation or psychiatric appointments at the Robert Young Center.

¶ 16 Egan testified that respondent remained unemployed, but she did have stable housing. The only money she received was from her father. Egan had difficulty contacting respondent and had to go to respondent's residence in order to do so. Respondent reported that she was pregnant, but claimed she had been raped and did not know the identity of the father. Egan opined that during her tenure as respondent's caseworker, the children were no closer to returning home to respondent than when they were removed on March 9, 2012.

¶ 17 In its written order, the circuit court found respondent unfit on the basis that she failed to make reasonable progress during the relevant nine-month period.<sup>1</sup> The written order did not reference the State's alternative allegation that respondent failed to maintain a reasonable degree of interest, concern, or responsibility for the children.<sup>2</sup>

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<sup>1</sup> The circuit court also found respondent unfit on the basis that she failed to make "reasonable efforts" (Emphasis added.) The State concedes error as to this specific finding. The State never sought unfitness on this basis.

<sup>2</sup> The circuit court references this alternative allegation in its oral pronouncement. We do not address this issue, however, since we uphold the court's finding of unfitness on the basis that respondent failed to make reasonable progress. Only one ground of unfitness needs to be proved

¶ 18 The circuit court subsequently held a best interest hearing where it terminated respondent's parental rights. Respondent appeals the court's unfitness finding. She does not appeal the court's best interest finding.

¶ 19 ANALYSIS

¶ 20 On appeal, respondent argues that the court's finding that she failed to make reasonable progress during the relevant nine-month period (March 8, 2012 through December 8, 2012) was against the manifest weight of the evidence. Specifically, respondent maintains that her efforts, while less than perfect, were sufficient to establish that she was making reasonable progress toward reunification. We disagree.

¶ 21 "[T]he benchmark for measuring a parent's 'progress toward the return of the child' encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill.2d 181, 216-17 (2001).

¶ 22 Here, the two caseworkers (McHugh and Egan) during the relevant nine-month period both opined that the children were no closer to returning home to respondent than when they were removed from respondent's care on March 9, 2012. This fact alone, if not refuted by the evidence, is sufficient to sustain the circuit court's finding of unfitness.

¶ 23 The record supports the two caseworkers' opinions. Despite the OP, respondent persisted in maintaining some level of contact with Tremaine. Both the circuit court and the caseworkers  

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by clear and convincing evidence for the court to find a parent unfit. *In re J.A.*, 316 Ill. App. 3d 553, 564 (2000).

found this fact troubling because respondent's abusive interaction with Tremaine was the primary reason for the removal of her children. We also note that respondent's visitation with the children was sporadic and inconsistent. Both caseworkers testified that they encountered difficulty in contacting respondent, that she failed to obtain employment and complete counseling, and that she never obtained a psychiatric evaluation or attended any psychiatric appointments at the Robert Young Center.

¶ 24 Respondent calls our attention to the testimony of one of her previous caseworkers, Caitlyn Goveia. Goveia was the family's caseworker from April 2010 until September 2011. Goveia's testimony is irrelevant since it relates to matters entirely outside the relevant nine-month period. In determining whether a parent has made reasonable progress toward the return of a child, courts may consider only evidence of circumstances occurring during the relevant nine-month period mandated in section 1(D)(m) of the Adoption Act. *In re J.L.*, 236 Ill.2d 329, 341 (2010). A court is not permitted to consider any evidence outside the designated nine-month period. *In re D.F.*, 208 Ill.2d 223, 242-43 (2003).

¶ 25 CONCLUSION

¶ 26 The judgment of the circuit court of Rock Island County is affirmed.

¶ 27 Affirmed.