2015 IL App (2d) 150512-U
No. 2-15-0512
Order filed September 18, 2015

IN THE

APPELLATE COURT OF ILLINOIS

SECOND DISTRICT

In re K.O., a Minor,	)	Appeal from the Circuit Court
	)	of Winnebago County.
	)	
	)	No. 11-JA-178
	)	
	)	
(The People of the State of Illinois,	)	Honorable
Petitioner-Appellee, v. Eric K.,	)	Mary Linn Green
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE BIRKETT delivered the judgment of the court.
Justices Hudson and Spence concurred in the judgment.

ORDER

¶ 1 *Held*: Although respondent was given no formal notice of court proceedings until the State filed its motion to terminate parental rights, respondent had ample opportunity beforehand to comply with service plans and to show interest, concern, or responsibility as to his son's welfare, but failed to do so.

¶ 2 Respondent, Eric K., appeals the trial court's judgments finding him to be an unfit parent and terminating his parental rights to his child, K.O. He claims that the court's judgments were tainted because he did not receive timely notice of the proceedings. He also claims that the court erred by failing to appoint him an attorney once he was adjudicated the biological father of K.O. For the following reasons, we affirm.

¶ 3 I. BACKGROUND

¶ 4 In June 2011, the State filed a petition alleging that K.O., born in November 2009, was neglected in various ways relating to his biological mother, Dawn O.'s, substance abuse. The putative father of K.O. was identified as "Michael Buchose." At the September 6, 2011, shelter-care hearing, Dawn claimed that Buchose, who had since passed away, was K.O.'s biological father. However, ten days later at the adjudicatory hearing, the State informed the court that paternity testing had excluded Buchose as the father and that Merten Kinison was possibly the father because he was paying Dawn child support.

¶ 5 At the dispositional hearing in January 2012, Dawn's caseworker, Samantha Becker, informed the court that Kinison had apprised her that his paternity of K.O. had been established in a domestic proceeding and that he was paying child support.

¶ 6 At the first permanency review on May 8, 2012, Becker informed the court that Kinison had recently passed away and that, contrary to what Becker had believed, Kinison never underwent testing to determine his paternity of K.O. Becker also stated that respondent had contacted DCFS and said he was interested in taking a paternity test. According to Becker, respondent was present in court that day with Dawn. The court ordered respondent to undergo paternity testing.

¶ 7 In her November 2012 permanency report, Becker stated that paternity testing done in August 2012 established respondent as K.O.'s father. Becker shared the results with respondent. According to Becker, respondent was "just wanting to have visits with [K.O.]." Becker was in the process of setting up weekly visits between respondent and K.O.

¶ 8 At the November 2012 permanency hearing, the court adjudicated respondent as K.O.'s father. Becker testified that she was still trying to contact respondent to set up visits with K.O.

The court made no permanency findings concerning respondent because he had just been adjudged K.O.'s parent. Respondent was not in court that day, and in fact did not appear again until a status hearing in June 2014. However, the State acknowledges, and the record confirms, that respondent "was not officially given notice of the court proceedings" until after the State filed in May 2014 its motion to terminate respondent's parental rights.

¶ 9 In her February 2013 permanency report, Becker indicated that she was unable to contact respondent in order to arrange visits and that his whereabouts were currently unknown. At the permanency hearing that same month, Becker stated that "DCFS did try to set up a visitation arrangement, but [respondent] did not follow through with that." Becker acknowledged that DCFS had not done "a diligent search" for respondent since the last permanency review, but did plan to conduct such a search in the future. The court found that respondent had made neither reasonable efforts nor reasonable progress toward the goal of reunification.

¶ 10 We note that, as Becker acknowledged later in the proceeding (at the August 2014 hearing on fitness), and as the record confirms, the first service plan for respondent was not drafted until March 2013. The March 2013 plan required respondent to participate in an integrated assessment, complete substance abuse and mental health assessments, and maintain contact with DCFS in order to inquire about K.O.'s well-being.

¶ 11 Becker's August 12, 2013, permanency report stated as follows regarding respondent's progress in services:

> "On 7/8/13 [respondent] showed up at the DCFS office. The purpose of his visit was to talk to DCFS regarding [K.O.]. This is the first contact DCFS has had with [respondent] in almost a year. Due to the fact that DCFS has not had any contact with him and his substance abuse history[,] DCFS requested that he complete a substance

> abuse assessment. At the time of his office visit, [respondent] was hesitant to fill out the assessment and requested that he be able to talk to someone prior to filling out the assessment. DCFS stated that he had the right to talk to someone prior to filling out the assessment. During the meeting he showed DCFS a prescription bottle of Seroquel. He stated that he is taking the medication to manage his mental health diagnosis. DCFS did not hear from [respondent] again until he showed up at the DCFS office again on 7/15/13. He stated that he was ready to fill out the assessment and was willing to engage in substance abuse services if they are recommended. DCFS asked him when his last use of substances was and he stated that he is clean and sober, but did not give an exact time of his sobriety. Following the meeting DCFS told him that he was able to go to Rosecrance at the State Street location as a walk-in and complete a substance abuse assessment. At the time of this writing DCFS has not received any documentation that [respondent] has completed a substance abuse assessment. He has failed to make any contact with DCFS since that date."

¶ 12 At the September 25, 2013 permanency hearing, Beck stated that respondent had not completed services and was not keeping in contact with DCFS. Becker, however, did not mention certain information contained in her September 25 service plan for respondent. First, respondent complete a substance abuse assessment on July 26, 2013, and was not recommended for services because he reported no substance use for the past six months. Second, respondent came to the DCFS offices on August 29, 2013, and was given a drug screen to complete, but had not contacted DCFS since then. Based on Becker's testimony and the DCFS documents, the court found that respondent had made neither reasonable efforts nor reasonable progress toward the goal of reunification.

¶ 13 In her March 24, 2014, permanency report, Becker noted that respondent had not contacted DCFS since August 29, 2013. According to Becker, DCFS made a diligent search for respondent on March 3, 2014, and found two possible addresses. As of the date of the report, respondent had not responded to letters sent to the addresses. Becker did not address respondent's progress in her testimony at the April 4, 2014, permanency hearing. Again finding no reasonable efforts or reasonable progress by respondent, the court changed the permanency goal to substitute care pending termination of parental rights.

¶ 14 In May 2014, the State filed a petition to terminate respondent's parental rights. The four counts in the petition alleged: (1) respondent failed to maintain a reasonable degree of interest, concern or responsibility as to K.O.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) respondent failed to make reasonable efforts to correct the conditions that were the basis for the removal of K.O. within the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(i) (West 2014)); (3) respondent failed to make reasonable progress toward the return of K.O. to him within the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(ii) (West 2014)); and (4) respondent failed to make reasonable progress toward the return of K.O. to him during any nine-month period after the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(m)(iii) (West 2014)).

¶ 15 When respondent did not appear for arraignment on the petition, the court granted the State leave to serve him by publication and continued the matter.

¶ 16 In her May 21, 2014, permanency report to the court, Becker noted that respondent's whereabouts were still unknown.

¶ 17 Respondent's first appearance in court since the May 2012 permanency review was at a status hearing on June 23, 2014. He stated that DCFS should not have had difficulty locating

him since he was living in the same place, the Rockford Rescue Mission, for the past two and a half years. Respondent also noted that he authorized the Mission to release information to DCFS and that he completed a drug screen, which came back negative. According to respondent, DCFS never contacted him about his case. He would have come to court previously "if someone told [him]." The court appointed an attorney for respondent, and he was arraigned on the termination petition in July 2014.

¶ 18 The termination hearing began in August 2014. At the fitness portion of the hearing, Becker testified that, in late 2012, after paternity was established, respondent came to DCFS offices and spoke to her. He asked to have visitation with K.O. He said he was currently engaged in services for substance abuse and mental health at Rockford Rescue Mission. Becker recommended that respondent undergo an integrated assessment and told him that she could try to set up visits with K.O. In March 2013, Becker created a service plan for respondent. He returned to the DCFS offices in August 2013, at which time she gave him a drug screen to complete. (According to her reports, respondent never completed the drug screen.). Respondent never had visitation with K.O. because he never provided Becker with dates and times when he was available. Respondent also did not complete his integrated assessment or attend administrative case reviews. Respondent did, however, complete a substance abuse assessment in July 2013, and no treatment was recommended. Respondent never inquired about K.O.'s welfare or gave him gifts or cards.

¶ 19 The court determined that respondent was an unfit parent because he had minimal contact with DCFS, did not engage in services, had no visits with K.O., and did not support him or inquire about his welfare. The court noted that there was no documentary evidence to support respondent's claim that he was engaged in services through the Rockford Rescue Mission.

¶ 20 At the best-interests portion of the hearing, respondent testified that he always knew that K.O. was his son. He cared for K.O. when he came home from the hospital. He signed paperwork when K.O. was taken into protective custody in September 2011. Respondent claimed that he gave Becker his contact information but she never contacted him as she said she would. Respondent stated that he was currently enrolled in parenting and anger management classes.

¶ 21 The court found that it was in K.O.'s best interests to terminate respondent's parental rights.

¶ 22 Respondent filed this timely appeal.

¶ 23 II. ANALYSIS

¶ 24 Respondent makes no substantive challenge to the trial court's fitness or best-interests determinations. He claims, rather, that the results below were tainted because, though the trial court adjudicated him the father of K.O. in November 2012, he had no formal notice of the proceedings until the State filed in May 2014 its motion to terminate parental rights. He also claims that the court erred by failing to appoint him counsel at any point prior to his arraignment on the motion to terminate. We reject both contentions.

¶ 25 First, for his claim that he should have been appointed counsel, respondent cites *In re Adoption of K.L.P.*, 198 Ill. 2d 448, 461 (2002), where the supreme court observed that "[w]hen the Illinois legislature enacted the Juvenile Court Act of 1987 [705 ILCS 405/1-1 *et seq.* (West 2014)], it provided that the parent of a minor who is the subject of proceedings under the Act will be provided with the assistance of court-appointed counsel if the parent is financially unable to employ counsel." For this proposition the court cited section 1-5(1) of the Juvenile Court Act (705 ILCS 405/1-5(1) (West 2014)), which states that "[a]t the request of any party financially

unable to employ counsel, with the exception of a foster parent permitted to intervene under this Section, the court shall appoint the Public Defender or such other counsel as the case may require." Our aim in construing this statute is to ascertain and give effect to the legislature's intent, and the best source of evidence for intent is the legislative language itself. *Brucker v. Mercola*, 227 Ill. 2d 502, 513 (2007). "If the statutory language is clear and unambiguous, then there is no need to resort to other aids of construction." *Id.* "Each word, clause and sentence of the statute, if possible, must be given reasonable meaning and not rendered superfluous." *Id.* at 514. The decisive language here is the clause, "[a]t the request of any party financially unable to employ counsel ***." Giving this language effect, as we must, we hold that the trial court had no duty to conduct a *sua sponte* assessment of whether respondent was entitled to counsel. If respondent wanted counsel, he needed to request counsel. We are sensitive, however, to the reality that respondent could not have requested counsel if he was not aware of the proceedings. On that point, we note that, while respondent was given no formal notice of court proceedings until the State filed its termination petition in May 2014, he cannot disclaim all prior knowledge of the proceedings, as he appeared at the May 2012 permanency hearing, where the court ordered that he undergo paternity testing.

¶ 26 Moreover, assuming the lack of notice did deprive respondent of the opportunity to appear in court, his conduct during that time was still reflective of whether he was a fit parent. Respondent does not deny receiving the service plans generated for him beginning in March 2013 or deny knowledge that his failure to complete the specified services could result in termination of his parental rights. The trial court, in finding respondent unfit for failing to engage in services, evidently found that respondent knew what services DCFS required of him as well as the consequences of noncompliance. We will not disturb that finding, as the trial court

was in a superior position to judge the credibility of the witnesses (*In re Julian K.*, 2012 IL App (1st) 112841, ¶ 66)). Respondent makes no substantive challenge to the court's finding that he failed to engage in services, and in fact no meaningful challenge is possible on these facts. The State must prove unfitness by clear and convincing evidence, and the trial court's decision on fitness is reviewed under the manifest-weight standard. *In re Katrina R.*, 364 Ill. App. 3d 834, 842 (2006). The court's finding that respondent failed to engage in services is amply supported by the evidence, for as of the August 2014 termination hearing respondent had only completed a substance abuse assessment. Thus, respondent failed to make reasonable progress toward the goal of reunification during any nine-month period after the initial nine-month period following the adjudication of neglect. See 750 ILCS 50/1(m)(iii) (West 2014).

¶ 27 Moreover, the finding of unfitness was supported by a ground independent of the service plans. In *In re T.D.*, 268 Ill. App. 3d 239, 247-48 (1994), the appellate court held that even if DCFS' "botched handling of [his] case" could excuse the respondent's noncompliance with his service plan, the finding of unfitness was sustainable on the ground that the respondent failed to show a reasonable degree of interest, concern or responsibility as to his children's welfare. For four years, the respondent failed to visit the children or send them cards, letters or gifts. *Id.*

¶ 28 Here, by respondent's own admission, he was already aware in September 2011, when K.O. was taken into care, that K.O. was his child. However, not until late 2012, after the adjudication of paternity, did respondent initiate contact with DCFS about his son. At that time, Becker informed respondent that he could visit K.O. No visits ever occurred, however. At the termination hearing, Becker and respondent gave conflicting accounts as to who was to initiate the follow-up contact to arrange visits. The trial court evidently believed Becker over respondent, faulting him for the lack of visits. We will not disturb that finding, as the trial court

was in a superior position to judge the credibility of the witnesses (*In re Julian K.*, 2012 IL App (1st) 112841, ¶ 66)). Moreover, not only did respondent not seek visits, he failed to inquire about K.O.'s welfare or send him gifts or cards. Hence, there was ample support for the court's finding that respondent failed to demonstrate a reasonable degree of interest, concern, or responsibility as to K.O.'s welfare. See 750 ILCS 50/1(D)(b) (West 2014).

¶ 29 As for the court's best-interests determination, respondent makes no substantive challenge to it. Rather, he claims that, because he "was not given a chance to be a father by DCFS," the best-interests finding is tainted. We disagree. As demonstrated above, respondent literally had years to show concern for his child through visits, gifts, cards, and the like. He failed to show that regard. Therefore, we reject respondent's challenge to the best-interests finding.

¶ 30 III. CONCLUSION

¶ 31 For the foregoing reasons, we affirm the judgment of the circuit court of Winnebago County.

¶ 32 Affirmed.