2015 IL App (3d) 140701-U

Order filed February 9, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In Re C.G. and L.G.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minors.	)	Rock Island County, Illinois,
	)	
(THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	Appeal Nos. 3-14-0701 and 3-14-0702
	)	Circuit Nos. 2010-JA-178
Petitioner-Appellee,	)	and 2012-JA-3
v.	)	
	)	The Honorable
BRANDY G.,	)	Peter W. Church,
	)	Judge, Presiding.
Respondent-Appellant).	)	
	)	

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness finding in both minors' cases was not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Brandy G., to be an unfit parent in separate cases involving the minors, C.G. and L.G. The finding was based on two grounds set out in the Adoption Act: failure to make reasonable effort to correct the conditions that led to the minors'

removal and failure to make reasonable progress toward reunification with the minors 750 ILCS 50/1(d)(m)(i) (West 2012). The trial court also found it in the best interest of both minors to terminate her parental rights. Brandy raises only one issue on appeal, arguing that the trial court's finding of her unfitness, which resulted in termination of her parental rights, is against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 Brandy has a total of four children, two older minors, and the subjects of the instant cases, C.G. and L.G. After reports were made to the Illinois Department of Children and Family Services (DCFS) in April 2010, Chad Grumadas, C.G. and L.G.'s father and Brandy's now ex-husband, was indicated for substantial risk of physical injury and injurious environment of Brandy's two older minors along with sexual molestation of one of the older minors. The older minors were subsequently placed in the custody of their respective fathers. Brandy agreed not to allow Chad access to any of her children and signed a service plan to that effect. The State then filed a neglect petition concerning C.G. on September 20, 2010, alleging injurious environment.

¶ 5 In early October 2010, reports were made to DCFS that Brandy was spending time with Chad in the company of C.G. On October 8, the State filed a petition for temporary custody of C.G. to which Brandy stipulated. The court granted the petition on October 12 and C.G. was taken into protective custody. Cynthia Felske, a child welfare specialist for DCFS, then assumed responsibility for the case and drafting all of its DCFS reports.

¶ 6 On January 7, 2011, C.G. was adjudicated neglected after a dispositional hearing and taken into the care of DCFS's foster care system. The court, in a supplemental order, accepted Brandy's service plan as recommended by DCFS to identify and assess areas she needed to show effort and progress for C.G.'s return home. The plan included psychological assessments, a

psychological evaluation, attending domestic violence and general counseling, learning and using parenting skills, and retaining employment and appropriate housing.

¶ 7 The court reviewed, *inter alia*, Brandy's efforts and progress with her service plan at C.G.'s first permanency review hearing on June 10. The order from that hearing indicated that Brandy had made reasonable and substantial efforts and progress. It noted that she still needed to make more progress. The DCFS report for that hearing indicated, however, that Brandy had unsatisfactorily progressed in all of her service plan goals. It also noted that she had obtained an order of protection against Chad in April. Yet, she was seen with him at a bus station in May.

¶ 8 The court found after C.G.'s permanency review hearing in December 2011, that Brandy had not made reasonable efforts or progress. The DCFS report noted Brandy had only satisfactorily completed her psychological evaluation, progressed in utilizing her learned parenting skills, and progressed by gaining employment though she had yet to provide proof. She still, however, did not have appropriate housing as she had not provided DCFS with the information needed for background checks of the family members with whom she lived. She also had not attended or provided verification of attendance to her psychological assessments or any counseling. She was told that following through with her counseling would show she recognized her issues concerning domestic violence and fear of Chad and could keep her children safe. The report, however, also noted that police reports proving that Brandy had violated her order of protection against Chad and that in November, she had the order dropped.

¶ 9 In January 2012, days after her birth, L.G. was taken by DCFS upon the State's petitions of neglect and for temporary custody. The neglect petition alleged that L.G. was neglected due to an injurious environment. Brandy and Chad had not made sufficient progress relative to their respective service plans; due to their living together, Chad would have access to L.G; and C.G.

was already in the care of DCFS. Brandy stipulated to the petitions on February 17. She stated she also moved back in with her family. L.G. was adjudicated neglected after a dispositional hearing on March 16, and a service plan for Brandy with respect to L.G., identical to C.G.'s, was created and accepted by the court.

¶ 10 The permanency order of May 18, which combined C.G. and L.G.'s cases, indicated Brandy had made nominal but not reasonable efforts and progress toward returning the minors home. She was doing well with services, but her home was still not appropriate for the minors' return. DCFS's report stated that Brandy had satisfactorily employed parenting skills when she visited with both minors. However, her other goals were rated unsatisfactory because she either failed to follow through with them or started their execution the last two or three months of the six month evaluation period as, for example, her acquisition of employment in April.

¶ 11 In November, the court again found that Brandy had not made reasonable efforts or progress according to her service plans and the DCFS report. The report noted she was still progressing unsatisfactorily with several of her goals. Specifically, she had quit the job she acquired in the previous months because she was not getting enough work hours but had not secured any other employment. She had stopped the domestic violence counseling she started in March with a final report showing in May. She then restarted counseling in October. At the hearing, Brandy stated, and it was corroborated in her DCFS report, that she stopped seeing her psychiatrist and taking her medication because she lost her medical card and could not afford the service. Yet, her DCFS report also notes she was told of another fiscally feasible option available for the service of which she did not take advantage. At the suggestion of DCFS, C.G.'s permanency goal was changed from "return home" to "substitute care pending determination of termination of parental rights." It remained "return home" for L.G. despite the same suggestion.

¶ 12 After the January 2013 permanency review hearing, Brandy was again found not to have made reasonable efforts or progress. The court noted that she had made reasonable efforts and some progress but it was last minute. L.G.'s permanency goal was then changed to accord with C.G.'s -- "substitute care pending determination of termination of parental rights." The DCFS report noted Brandy was still unemployed and had not acquired appropriate housing but was working with agencies for both. She also had unsatisfactory progress with respect to her psychological assessments and counseling.

¶ 13 Brandy was found to have made nominal but not reasonable progress or efforts after all of the later permanency review hearings for 2013 except for December. Findings were not made in December because a review hearing had just been conducted in September. Yet, the transcript from Brandy's fitness hearing notes the court stating it would have found Brandy had made no reasonable progress or efforts at that time. Her DCFS reports for those permanency review hearings noted the shift to satisfactory progress for counseling for the entire year and unsatisfactory progress in her utilization of her parenting skills towards the latter part of the year. Her psychological assessments only showed satisfactory progress once and her employment and housing progress remained unsatisfactory. Nevertheless, Brandy did have a *nunc pro tunc* order entered April 5, 2013, indicating she was making reasonable efforts at that time.

¶ 14 On January 27, 2014, the State filed a supplemental petition under section 1(D)(m) of the Adoption Act (750 ILCS 50/1(D)(m) (West 2012)) in both minors' cases to terminate Brandy and Chad’s parental rights. On February 4, the court accepted both of Chad’s signed final and irrevocable consents to adopt, one for each minor. The State, on April 8, amended its supplemental petition in both minors' cases adding dates and excluding Chad.

¶ 15 The amended supplemental petitions alleged that Brandy was unfit under the Adoption Act. The petition for C.G. specifically stated Brandy:

> "1. Failed to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected under section 2-3 of the Juvenile Court Act of 1987, said periods beginning October 7, 2011 through July 7, 2012, July 7, 2012 through April 7, 2013, and April 7, 2013 through January 7, 2014 (750 ILCS 50/1(d)(m)(i)); and
>
> 2. Failed to make reasonable progress toward the return of the child to the parent during any 9-month period after the end of the initial 9-month period following the adjudication of neglect under section 2-3 of the Juvenile Court Act of 1987, said periods begin October 7, 2011 through July 7-2012, July 7, 2012 through April 7, 2013, and April 7, 2013 through January 7, 2014 (750 ILCS 50/1(d)(m)(i))."

¶ 16 The petition for L.G. was nearly identical but for the said nine-month periods being March 16, 2012, through December 16, 2012, and December 16, 2012, through September 16, 2013 for both factors.

¶ 17 The petition's factual basis supporting its allegation of Brandy's unfitness for both minors stated Brandy "[f]ailed to maintain housing that was an appropriate return option for the minor, [f]ailed to maintain steady employment and income, and [f]ailed to consistently comply with

psychiatric treatment and medications." For C.G. it further stated she "[f]ailed to engage in individual counseling and domestic violence services until March 5, 2012, then stopped and started those services several times through February 2013." For L.G. it stated Brandy "[s]topped and started individual counseling and domestic violence services several times through February 2013." Both petitions argued that terminating Brandy's parental rights was in the minors' best interest.

¶ 18 A fitness hearing was conducted on May 16, 2014. Brandy was not present, but was represented by counsel. Over objection, all reports filed and orders issued were judicially noticed. Felske testified and was subjected to cross-examination. Transcripts were ordered for proceedings from the judicially noticed orders and a subsequent review/status hearing was conducted on June 20. At the later hearing and subsequently in its order issued July 10, the court found that the State had proved by clear and convincing evidence that Brandy was unfit for failing to make reasonable efforts during C.G.'s said nine-month time periods of October 7, 2011, through July 7, 2012, and April 7, 2013, through January 7, 2014, and L.G.'s said nine-month time period of March 16, 2012, through December 16, 2012. It also found she was unfit for failing to make reasonable progress for both minors during any of their respective nine-month time periods.

¶ 19 A best interest hearing was held on September 9 after being continued twice due to Brandy's absence. Felske testified and the court took judicial notice of her best interest report. Brandy also testified. The court found that it was in the best interest of the minors that Brandy's parental rights be terminated. This appeal timely followed.

¶ 20 ANALYSIS

¶ 21 A trial court's findings will not be disturbed on appeal unless they are against the manifest weight of the evidence, that is, if the opposite conclusion is clearly apparent. *In re M.R.*, 393 Ill. App. 3d 609, 613 (2009). Brandy argues that the trial court's findings of unfitness in both minors' cases are against the manifest weight of the evidence. She asserts she did make reasonable efforts to correct the conditions that led to the minors' removal and reasonable progress toward their return home during each of their respective nine-month periods. We disagree and find that the record supports the trial court's finding of Brandy's unfitness due to her failing in both minors' cases to make reasonable efforts and progress during the said nine-month periods.

¶ 22 Section 1(D)(m) of the Adoption Act contains the two separate grounds alleged by the State in this case[1] on which a court can uphold for a finding of parental unfitness. 750 ILCS 50/1(D)(m) (West 2014). The grounds, in relevant part, are:

> "Failure by a parent (i) to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period***, or (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period***" 750 ILCS 50/1(D)(m) (West 2014).

¶ 23 Looking to the first ground, the court views "reasonable efforts" subjectively for the particular parent whose rights are at stake. *In re Gwynne P.*, 346 Ill. App. 3d 584, 596 (2004). Brandy asserts that the condition that was the basis of C.G.'s removal and L.G.'s default removal

[1] Pursuant to the legislative change in the statute and the timing of their filing of the parental rights termination petitions in this case, the State proffered the relevant version of the statute. See 2014 Ill. Legis. Serv. P.A. 98-532 (S.B. 1686) (West).

was Chad's presence around the minors. She argues that the record has little to no evidence of Chad having contact with the minors at any time during either of the minors' respective nine-month time periods. This argument, however, fails to appreciate the entirety of this section of the Adoption Act that further notes:

> "If a service plan has been established*** to correct the conditions that were the basis for the removal of the child from the parent and if those services were available, then, for purposes of this Act, "failure to make reasonable progress toward the return of the child to the parent" includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period following the adjudication***"750 ILCS 50/1(D)(m) (West 2014)

Though a parent's reasonable efforts are viewed subjectively, those efforts are assessed using the service plan created to correct the conditions that led to the minor's removal.

¶ 24 In this case, the trial court found that Brandy did not make reasonable efforts during C.G.'s said nine-month time periods of October 7, 2011, through July 7, 2012, and April 7, 2013, through January 7, 2014, or L.G.'s said nine-month time period of March 16, 2012, through December 16, 2012. We agree.

¶ 25 The record shows that Brandy continuously failed to make reasonable efforts during C.G. and L.G.'s nine-month periods, October 7, 2011, through July 7, 2012, and March 16, 2012, through December 16, 2012, respectively. She was noncompliant with the majority of her service plan goals. Though she was pregnant with L.G. during nearly the first half of C.G.'s nine-

month time period and therefore unable to take her prescribed medications, she failed to continue her psychological assessments and took until February 2012 to complete her psychological evaluation as was required in C.G.'s service plan. She failed to aid in verifying her attendance or even the center she claimed to frequent for her counseling services. Her housing status continued to be inappropriate as she was apathetic in getting her family members to submit to a background check or provide their information herself. She was unemployed for a majority of both minors' nine-month periods quitting one job after only a few months with no other employment ever verified. Even her flawed reasonable-efforts argument that the record showed she eliminated Chad's contact with the minors, thus correcting the conditions for their removal, fails. She admits that she lived with Chad until shortly after L.G.'s birth in January 2012, which is nearly half the relevant nine-month period for C.G. Thus the record supports the trial court's finding that Brandy failed to make reasonable efforts during both minors' first said nine-month time periods.

¶ 26 Brandy further failed to make reasonable efforts during C.G.'s last nine-month period, April 7, 2013, through January 7, 2014. According to the DCFS reports during this nine-month time period, Brandy still fell short of nearly all of her service plan goals. She continued her inconsistent psychological assessments and counseling. Though she was receiving one-on-one support with positive feedback, it too began to taper with missed appointments. Her visits with the minors changed from partially supervised to supervised as she was unable to and, in some cases, simply failed to assert control over C.G. resulting in safety issues during several visits. The court even opined during the December 2013 permanency review hearing that C.G. had been in the system nearly three years and Brandy still had not secured appropriate housing or permanent employment. This was amid her repeated professions at the permanency review

hearings and to DCFS that some organization/agency was assisting her with housing and employment. Brandy failed to make reasonable efforts during this nine-month period for C.G.

¶ 27 Thus, the State proved by clear and convincing evidence that during two of C.G.'s nine-month periods and one of L.G.'s nine-month period Brandy failed to make reasonable efforts to correct the conditions that led to the minors' removal. Even though only one ground alleged and proven is needed for the trial court to find a parent unfit, in this case, the alleged ground of lack of reasonable progress was also proven by the same clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005) ("A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence.")

¶ 28 The court views "reasonable progress" objectively, requiring, at a minimum, the parent make measurable steps toward the permanency goal of reunification through compliance with court directives, service plans or both. *In re J.A.*, 316 Ill. App. 3d 553, 564–65 (2000). There is ample objective evidence in the record supporting the trial court's finding of Brandy's failure to make reasonable progress during all of the nine-month time periods for both minors.

¶ 29 The court opined that all of the orders from the permanency review hearing for the time periods identified for both minors found Brandy had not made reasonable progress. It stated, and we agree, that although some of the orders identified nominal progress, it was not the reasonable progress required. See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 88–89 (Nominal efforts are insufficient to show reasonable efforts and reasonable progress). The court was sure to note, however, that its finding of Brandy's failure to make reasonable progress took into account the orders, the DCFS reports it judicially noticed, and testimony.

¶ 30 Here on appeal, Brandy highlights her positive progress with respect to her service plan as recorded in her DFCS reports. She asserts she completed her psychological evaluation

requirement, attended counseling sessions with Freedom House and other agencies, and continued seeing her psychiatrist after getting her new medical card. She became employed full-time with Super 8. After that ended, she was working with agencies to obtain employment. She further states that throughout the time periods, she had positive and consistent partially supervised visits with the minors that were a reflection of the counseling she had attended. She was also seeking help from various agencies to find housing.

¶ 31 Short of her satisfactory completion of her psychological evaluation, those highlighted occurrences do not negate the consistent unsatisfactory progress notations in the same DCFS reports. Brandy never obtained appropriate housing for the minors and she never maintained permanent employment during any of the minors respective nine-month time periods. Her attendance at, and even the actual existence of, the counseling center she allegedly initially used for her counseling were never verified. Moreover, neither her verified counseling nor her psychological assessments were ever consistent. Even when she started receiving one-on-one counseling it too tapered off. Her visitation with the minors was ultimately changed to supervised in the latter part of the minors' last nine-month periods due to what DCFS deemed as inept parenting skills. Thus, the trial court's finding that Brandy is unfit for failing to make reasonable progress towards the minors' return home during all of the specified nine-month periods for both minors is not against the manifest weight of evidence.

¶ 32 The State proved by clear and convincing evidence that Brandy failed to make reasonable efforts to correct the conditions that led to the removal of both minors and failed to make reasonable progress towards their return home. The trial court's finding of Brandy's unfitness is not against the manifest weight of the evidence. As she has raised no specific challenge to the best interest finding as to either minor, we affirm.

¶ 33 CONCLUSION

¶ 34 The ruling of the trial court of Rock Island County is affirmed.

¶ 35 Affirmed.