2015 IL App (3d) 140800-U

Order filed February 23, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re D.H., D.H. Jr., and D. H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors.	)	Peoria County, Illinois,
	)	
(THE PEOPLE OF THE STATE	)	
OF ILLINOIS,	)	Appeal Nos. 3-14-0800, 3-14-0801
	)	and 3-14-0802
Petitioner-Appellee,	)	Circuit Nos. 10-JA-300, 10-JA-301
v.	)	and 10-JA-302
	)	
DOMANQUE H.,	)	The Honorable
	)	Albert Purham, Jr.,
Respondent-Appellant).	)	Judge, Presiding.

PRESIDING JUSTICE McDADE delivered the judgment of the court.
Justices Lytton and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness and best interest findings were not against the manifest weight of the evidence.

¶ 2 The trial court found respondent, Domanque H., unfit to parent his three minors: D.H., D.H., Jr., and D.H. The trial court also found it was in the best interest of the minors to

terminate respondent's parental rights. Respondent appeals arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 Respondent is the father of D.H., D.H., Jr. and D.H. On October 14, 2010, the State filed petitions alleging the minors were neglected by reason of an injurious environment and medical neglect of D.H., Jr. The minors were adjudicated neglected and a dispositional order was entered finding respondent unfit.

¶ 5 The dispositional order also required respondent to (1) execute all authorizations and releases of information for the Illinois Department of Children and Family Services (DCFS), (2) cooperate with DCFS, (3) perform two random drug drops per month, (4) participate in and successfully complete counseling, (5) participate in and successfully complete a parenting course, (6) participate in and successfully complete a domestic violence course, (7) obtain and maintain stable housing, (8) visit with the children as scheduled, (9) cooperate with providing information to the caseworker concerning change of address and relationships, (10) obtain a drug and alcohol assessment and complete any necessary treatment recommended, and (11) submit to a psychological examination. All services for these requirements were to be provided and progress assessed through DCFS.

¶ 6 On August 16, 2013, the State filed a petition to terminate the respondent's parental rights for failure to make reasonable progress toward the return of the minors during any nine-month period after the initial nine-month period. The specified nine-month period was November 14, 2012 to August 14, 2013.

¶ 7 At the adjudicatory hearing on the petition to terminate, the trial court indicated it would take judicial notice of the petitions, adjudication order, dispositional orders, and permanency

review orders for "benchmark" purposes. The court admitted into evidence, *inter alia*, the respondent's drug drop records, reports of his visitation with the minors, and counseling reports. The visitation and counseling reports were admitted over respondent's objection that they may contain hearsay.

¶ 8 Respondent's caseworker, Michelle Clark, testified that during the relevant time period respondent had already completed a parenting class and visited weekly with the minors. Respondent did some drug testing and attended some counseling sessions. He also completed a domestic violence course. Amid denials of being in a relationship with the minors' mother, the mother disclosed to Clark that she was pregnant during this time and respondent was the father. The mother also informed Clark that she and respondent had been staying at the same address.

¶ 9 Clark further stated respondent reported he lived at four different locations during the specified time period. Respondent provided the information of only three of them. She visited two of those three locations. At the two visited locations, she did not observe any safety hazards. She learned of a fifth residence through a police report.

¶ 10 Clark testified that the minors' permanency goals were changed to "24," substitute care pending termination twice. In May 2012, they were changed to 24 but then changed back to "23," return home, in November 2012. They were changed permanently to "24" in June 2013. DCFS's policy allows required counseling to continue for free when there is a standing relationship with a therapist. The policy is communicated to the parents through their caseworkers and/or therapists. Clark was not asked if she communicated this information to respondent.

¶ 11 Leah Ford, respondent's other caseworker, also testified regarding the change of the minors' permanency goals. She repeated Clark's assertion of DCFS's policy to continue providing

counseling after the goal change. When asked if she communicated the policy to respondent, she admitted that she did not verbally tell respondent about the policy and the letter she mailed to him to that effect was returned. A second letter regarding the policy was sent by a new caseworker.

¶ 12 Ford also testified, over respondent's objection, that there was a police report containing a statement that respondent had violently attacked the minors' mother. Over respondent's additional objection, she testified that respondent was ordered to attend domestic violence classes because of the incident.

¶ 13 Respondent testified that he completed his drug assessment and psychological evaluation prior to the specified time period. He worked cleaning houses with a friend six times a month and received $9 an hour. He signed a consent form allowing his drug drop results during the specified nine-month period for his parole to be given to his caseworker. He attended some counseling between November 14, 2012, and March 14, 2013. He stated, however, that when he was ordered to pay $85 per counseling session when the minors' permanency goal changed, he could not afford to continue with the service. He was not given options for free counseling.

¶ 14 Additionally, respondent stated, due to his parole, he was also unable to visit the minors on the days DCFS scheduled his visits. His ankle monitor restricted his movement outside the home to specific days and times. His parole officer, however, could and did authorize respondent's visits with the minors on days his movement was restricted.

¶ 15 The trial court took the matter under advisement and on June 24, 2014, rendered its decision. It took into account the visitation record noting the respondent's missed visits due to cancellations or forgetfulness; his failure to control the minors' behavior during attended visits; and his failure to bring snacks as required. The trial court considered respondent's counseling

reports, cancellations, and sessions simply missed. It did not find respondent's inability to pay the $85 fee for the counseling sessions after the minors' permanency goal change credible. The court did, however, find significant the respondent's lack of application of the concepts learned in counseling. The trial court found respondent unfit because he failed to make reasonable progress during the relevant nine-month period.

¶ 16 The trial court subsequently held a best interest hearing where the following evidence was adduced. D.H., Jr., born June 4, 2009, was placed in foster care on October 13, 2010 and has been in the same foster home as his siblings since May 9, 2011. D.H., born May 9, 2010, has been in the same foster home as his siblings since May 9, 2011. D.H., born October 15, 2008 has been in the same home as her siblings since January 10, 2013.

¶ 17 The minors have two half siblings, E.J. and A.W. E.J. has been in the same foster care home as the minors in this case since March 14, 2011. A.W. has been in the same foster care home as the minors in this case since January 10, 2013.

¶ 18 The best interest report showed that the minors' basic needs of food, shelter, health, and clothing were all met by the current placement. The minors have all bonded with the foster parents and refer to them as "mom" and "dad." They refer to the foster parents' extended family as "aunts," "uncles," etc. The minors are thriving in the foster home and are developmentally on track. They attend church and the minors have developed friendships in the neighborhood. The minors have a chance to grow up together in a stable, loving environment as the foster parents have expressed an interest in adopting all of them.

¶ 19 The results of the bonding assessment, requested by respondent after the adjudicatory hearing, showed the minors have minimal, if any, bond or relationship with respondent. Respondent, however, testified at the best interest hearing that despite the assessment results, the

minors were happy to see him and he has a healthy bond with them. The minors showed affection towards him before and after the assessment. They referred to him as their dad or the nickname "slap dad." He notes the assessment identified some problems such as whether a lotion should be used for D.H. Jr., due to his health issues. However, the one hour assessment was not long enough considering the number of children being assessed.

¶ 20 Upon conclusion of the best interest hearing, the trial court found it was in the best interest of the minors to terminate respondent's parental rights. Respondent appeals the court's unfitness finding and its best interest finding.

¶ 21 ANALYSIS

¶ 22 Respondent appeals the trial court's termination of his parental rights. Specifically, he contends the court's order finding him unfit was against the manifest weight of the evidence. He further contends that the court's order finding it was in the minors' best interest to terminate his parental rights was against the manifest weight of the evidence. We reject both of the respondent's claims.

¶ 23 Unfitness Finding

¶ 24 Respondent challenges the reasonable progress finding made by the trial court. Section 1(D)(m)(iii) of the Adoption Act provides that a parent shall be considered unfit to have a child under the following circumstance: "(m) [f]ailure by a parent*** (iii) to make reasonable progress toward the return of the child to the parent during any [nine]-month period after the end of the initial [nine]-month period following the adjudication of neglected or abused minor***" 750 ILCS 50/1 (D)(m)(iii) (West 2012).

¶ 25 Reasonable progress is an objective standard that requires a measureable or demonstrable movement toward the goal of reunification. *In re B.W.*, 309 Ill. App. 3d 493, 499 (1999). In

assessing a parent's fitness with regard to their progress under section I (D)(m)(iii) of the Adoption Act, the trial court looks to the parent's "compliance with the service plans and court 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, 217 (2001). There must be clear and convincing evidence to support a finding of unfitness. *In the Interest of R.B.W.*, 192 Ill. App. 3d 477, 500 (1989). Such a finding is against the manifest weight of the evidence if a review of the record clearly demonstrates that the proper result is the one opposite that reached by the trial court. *Id*.

¶ 26 In the present case, the trial court relied upon the neglect petitions, adjudication orders, dispositional orders, and permanency review orders as "benchmarks" for measuring respondent's progress with his service plan during the specified nine-month period. It also admitted and considered evidence including respondent's drug drop records as well as respondent's visitation and counseling reports, which respondent objected to, claiming they might contain hearsay. The trial court heard testimony from respondent's caseworkers noting respondent's insufficient compliance with his service plan and other matters of concern. It also heard counter testimony from respondent regarding his service plan progress. After taking the matter under advisement, the trial court determined respondent was unfit due to his failure to make reasonable progress towards unification by not complying with his service plan and the later-identified issue of not employing the skills learned in counseling. We agree. This finding is not against the manifest weight of the evidence as it is amply supported by the record.

¶ 27 As a preliminary matter, we briefly discuss respondent's argument that only properly admitted evidence should be considered at fitness hearings. Respondent has forfeited this

argument, however, because he does not specify what evidence in this case was not properly admitted. See *In re Marriage of Heinrich*, 2014 IL App 2d 121333, ¶44; see also Ill. S. Ct. R. 341 (h)(7) (eff. Feb. 6, 2013). His assertion is correct that hearsay information such as information in police reports is not admissible, unless it falls under an exception. *In re M.F.*, 304 Ill. App. 3d 236, 241 (1999). However, no police report regarding respondent was submitted much less erroneously admitted into evidence. The counseling reports submitted into evidence over objection, which respondent mentions in his facts reference a police report, were properly admitted under section 2–18(4)(a) of the Juvenile Act. 705 ILCS 405/2-18 (4)(a)(West 2012). The testimony of caseworker, Ford, regarding the same police report was also properly admitted over respondent's objection as it was not allowed for the truth of the matter asserted, but to provide a reason – though incorrect – as to why respondent was required to complete a domestic violence course.[1] Thus, it was not hearsay. *People v. Williams*, 181 Ill.2d 297, 313 (1998). Further, our review of the court's decision does not show reliance on the references to the police report noted in the counseling report or Ford's testimony. The issue is, therefore, without merit.

¶ 28 Now moving on to the sufficiency of the evidence supporting the court's finding of respondent's unfitness, the trial court notes and the record shows respondent did not satisfy his visitation service plan requirement. Respondent missed or was tardy for several visits with the minors, did not bring the required snacks when he did attend visits, and did not control the minors' improper behavior during his visits. He asserted during the adjudicatory hearing that the missed visits were due to the conflict between his movement restriction as a parolee and the time scheduled for visits. However, he testified that he could and did get permission from his parole

[1] Respondent's service plan created at the dispositional hearing after the minors were adjudicated neglected in 2011 included a requirement to complete a domestic violence course.

officer for the visits scheduled on days he was restricted. The record shows respondent still missed the visits scheduled on the days he had no movement restrictions.

¶ 29 The trial court noted respondent's counseling attendance was also noncompliant. He did not begin attending counseling during the specified time period until December 2012 and then attended only intermittently until March 2013. A letter stating respondent had not been in attendance at counseling at all since March 2013 was included in his counseling report. The trial court did not believe his argument that the $85 fee for counseling limited his ability to comply with the service plan goal. We also do not find it persuasive. The record shows the permanency goal for the minors changed for the final time in June 2013 to "24," substitute care pending termination. Both caseworkers testified that such a change included a discontinuation of DCFS's services related to respondent's service plan, unless respondent had a standing relationship with his therapist. As noted, respondent's counseling report stated he had not attended counseling since March 2013. Thus, the assessed fee had no bearing on his voluntary cessation of his required counseling.

¶ 30 Respondent's argument regarding a possible lag in the restart of his DCFS provided counseling at the commencement of the specified nine-month period is without merit. The minors' permanency goal was changed for the first time to "24" in May 2012 and then back to "23," return home, in November 2012. Respondent's claim that the lag in the restart of his counseling services caused his delinquency was negated by his sporadic counseling attendance beginning December 3, 2012, only two weeks into the specified nine-month period.

¶ 31 The trial court, lastly, noted its concern regarding respondent's failure to employ the skills he learned in counseling. He was not being honest with those trying to help him. His excuses for missing counseling sessions and visitations with the minors were found not to be credible. He

denied his relationship with the minors' mother even though she was pregnant with his child at the time and stated to Clark she had been living with him. Even his assertions regarding his completed service plan initiatives such as the parenting course reinforce the court's finding of respondent's failure to employ the skills he learned. The visitation reports note he was not properly engaging with the minors during visits throughout the specified time period.

¶ 32 We further note respondent did not meet his service plan requirements of stable housing or properly informing DCFS of his address changes during the specified time period. Clark testified respondent reported four residences during the relevant time period. She was only given information about three. She visited two of those three. She later found out about a fifth residence on Webster Street from a police report. Respondent counters he had stable housing during the specified time period as he only had two different residences. He testified to living on "Gilbert and Webster and Millman." He stated Millman and Webster intersect. Therefore, it was one residence instead of two. The location with unreported information, his brother's house, was not his residence. He then notes Clark's positive review of the two residences she visited.

¶ 33 Albeit Clark's positive evaluation of the two locations visited, the record does not support respondent's assertion of only two residences during the specified time period. His argument that Millman and Webster make one residence is refuted by the DCFS report for the permanency review hearing in June 2013, which covered the majority of the specified nine-month period. It noted five separate residences, River West, Gilbert, respondent's brother's house, Millman, and Webster. Four were reported by respondent including his brother's house. Webster, the one ascertained from a police report to which he acknowledged, is also noted. Millman and Webster are clearly reported as two different addresses.

¶ 34 Moreover, we are not of the opinion that a stable home involves the constant movement as shown here. Even in considering only those three residences respondent acknowledged, he had a different residence, on average, every three months within the specified nine-month period. Respondent plainly did not have stable housing and did not properly report his address changes.

¶ 35 Therefore, we agree with the trial court that respondent failed to make reasonable progress towards reunification. The trial court's finding of respondent's unfitness was not against the manifest weight of the evidence.

¶ 36 Best Interest

¶ 37 We turn now to the issue of the termination of respondent's parental rights. After the parent is found unfit, the court determines the minor's best interest at a separate proceeding so that the minor's interests are afforded the proper focus. *In re Tashika F.*, 333 Ill. App. 3d 165, 170 (2002). During that proceeding, the State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court's best interest finding will not be disturbed unless it is against the manifest weight of the evidence. *In re T.A.*, 356 Ill. App. 3d 953, 961 (2005).

¶ 38 The following factors are considered when a best interest determination is required:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments ***
>
> (e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3 (4.05) (West 2012).

¶ 39 Here, the trial court reviewed each of the factors as it detailed its findings based on the best interest report and testimony of respondent. The evidence demonstrated that, despite the relationship between the minors and respondent, the minors' bond with the foster parents is stronger.

¶ 40 D.H., Jr., born June 4, 2009, was placed in foster care in October 13, 2010 and has been in the same foster home as his siblings since May 9, 2011. D.H., born May 9, 2010, has been in the same foster home as his siblings since his first birthday, May 9, 2011. D.H., born October 15, 2008 has been in foster care since May 9, 2011 and the same home as her siblings since January 10, 2013.

¶ 41 According to the best interest report, the minors have clearly bonded with their foster parents as well as the foster parents' extended family. The foster parents have helped with their socialization and development of a positive identity. They provide the minors safety, stability, and care diligently for their welfare. The minors attend church and school, pre-school and have

forged friendships with other youth in the community. The minors are also being provided a unique opportunity to grow up together along with their half siblings as the foster parents wish to provide permanency through adoption for all of them.[2]

¶ 42 Conversely, the record shows the minors have no such bond with respondent despite his assertions. Although the minors refer to respondent as "dad" or "slap dad," they have a stronger sense of attachment to the foster parents and refer to them as "mom" and "dad" and the foster care family's extended family as aunts, uncles, etc. Additionally, the results of the bonding assessment requested by respondent showed he did not have a healthy parent-child bond with the minors. The only display of affection by the minors towards respondent was before and after the assessment. Respondent contends that the assessment, however, was not long enough and that he does have a healthy relationship with the minors as evidenced by his visitation reports. Yet, those reports do not show such a bond. The reports note D.H. turns to the foster parents for her security; D.H., Jr. required a foster care parent remain in the room during respondents' visits; and D.H., the youngest, has very little relationship with respondent. Further, this case has been open for four years. Respondent's continued service plan noncompliance, failure to employ learned skills, and unstable housing provide no indication as to when he might return to fitness. Such uncertainty in permanency is detrimental to the minors. See *In re C.C.*, 299 Ill. App. 3d 827, 830 (1998); see also 705 ILCS 405/2-14(a) (West 2012). Thus, we conclude the trial court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 43 For the reasons stated, we affirm the trial court's judgment

[2] The minors have two half siblings, E.J. and A.W. E.J. has been in the same foster care home as his siblings since March 14, 2011. A.W. has been in the same foster care home as her siblings since January 10, 2013.

¶ 44 Affirmed.