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2015 IL App (3d) 140871-U

Order filed March 20, 2015

IN THE
APPELLATE COURT OF ILLINOIS
THIRD DISTRICT

A.D., 2015

<i>In re</i> D.J., D.J., D.J. & W.J.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
)	
(The People of the State of)	
Illinois,	)	Appeal Nos. 3-14-0871, 3-14-0872,
	)	3-14-0873 & 3-14-0874
Petitioner-Appellee,	)	Circuit Nos. 09-JA-185, 09-JA-186,
	)	09-JA-187 & 09-JA-188
v.)	
)	
Wesley J.,)	
	)	Honorable
Respondent-Appellant).	)	David Dubicki
	)	Judge, Presiding.

JUSTICE O'BRIEN delivered the judgment of the court.
Justices Holdridge and Schmidt concurred in the judgment.

ORDER

¶ 1 *Held:* The termination of a father's parental rights was upheld on appeal because the trial court's finding that the father was unfit for failing to make reasonable progress toward the return of the minors during the relevant nine-month period was not against the manifest weight of the evidence.

¶ 2 The respondent, Wesley J., the father of the minors, D.J., D.J., D.J., and W.J, appeals the termination of his parental rights.

¶ 3 FACTS

¶ 4 On July 16, 2009, the State filed juvenile petitions alleging that the minors, D.J., D.J., D.J., and W.J., were neglected due to an injurious environment. The minors were initially placed with a maternal aunt upon their removal from the home, but they were then placed in a traditional foster home on July 22, 2009. The minors were adjudicated neglected on October 19, 2009. On November 16, 2009, the father and the mother were both found to be dispositionally unfit. Both were ordered to perform certain tasks in order to correct the conditions that led to the adjudication of neglect. The father was ordered to: (1) execute all necessary releases; (2) cooperate fully with the Department of Children and Family Services (DCFS) or its designee; (3) obtain a drug and alcohol assessment; (4) perform three random drug drops per month; (5) participate and successfully complete counseling as recommended; (6) participate and successfully complete domestic violence classes; (7) obtain and maintain stable housing; (8) notify DCFS of any changes in living arrangements within three days; (9) provide the assigned caseworker of identifying information regarding any person with a relationship that would affect the minors; and (10) visit the minors as scheduled.

¶ 5 The minors have remained in the same foster home since July 22, 2009. On April 25, 2014, the State filed petitions to terminate both the mother's and the father's parental rights for failing to make reasonable progress during the nine-month time period from June 10, 2013, to March 10, 2014. At the hearing on the petition, the State sought to introduce its Exhibit No. 1, which consisted of records from the Children's Home Association of Illinois (Children's Home) as to both the mother and the father. Both the mother's and the father's attorney objected to the

records on hearsay grounds. The trial court overruled the objection, finding that the records were certified and delegated by Children's Home and were admissible records of an agency, but specified that it would only consider the records specific to the relevant nine-month period.

¶ 6 Mindy Weber, a caseworker at Children's Home, testified that she had been the caseworker on the present case for the previous five years. Weber testified that, during the relevant time period, the father was supposed to maintain employment and housing, do two random breathalyzers a month, participate in family counseling, and visit the minors. All other ordered services had been completed. According to Weber, the father had maintained adequate housing and employment during the relevant time period. However, Weber testified that during the relevant time period, the father did not complete all of his breathalyzers. The father completed one of the two required breathalyzers in June 2013. In July, August, and September, there was a funding issue, so the father was not required to complete any breathalyzers. The first test in October was also not required due to the funding issue, but Weber did not get any results from the second required test that month. The fact that no results were communicated to Weber indicated to her that the father did not do the second test in October. The father again only completed one of the two tests in November. Weber testified that she did not receive results from either breathalyzer test in December, but Exhibit 1 indicates a negative result on December 26, 2013, so the father completed one of the two required tests. As of January 2014, there was again a funding issue, and a breathalyzer was no longer an option. Weber informed the father that he would have to do urine drops rather than breathalyzers, but he refused. Weber noted that the facility for the drug drops was in an area of town far from the father's home and work, and its hours were limited. She informed him that if he had a work conflict on the day that he had to do

his drop, he should let her know and she could arrange another day with proof of work. However, he never contacted her, and he did not do any drops in January or February.

¶ 7 Weber testified that the minors were scheduled to visit with the father for one hour per week. According to the records contained in Exhibit 1, the father cancelled approximately half of the visits. The father testified regarding some of the cancellations. He recalled one cancellation, July 19, 2013, was due to a schedule change that same day that conflicted with his work schedule. In Exhibit 1, the father's reason for cancelling was usually listed. Those reasons included: not prepared, his house had been broken into, he was late getting out of court, a death in the family, illness, he fell on the ice, and his sister-in-law was having surgery. The father could not recall the specifics when questioned regarding the reason he was not prepared on June 28, 2013, and what else he had to do on October 25, 2013. The father could not recall the specific reasons why he cancelled two family counseling sessions, but thought weather might have been the reason for one of them.

¶ 8 At the conclusion of the hearing, the trial court clarified that the father's breathalyzers were not pursuant to an order of the court, but were required as part of his cooperation with DCFS and Children's Home. The trial court ruled that the mother had not made reasonable progress toward the return on the minors, but found that the evidence with respect to the father was a closer call. The trial court acknowledged that the father had maintained employment and stable housing during the relevant time period. However, trial court concluded that the State had proven by clear and convincing evidence that the father failed to make reasonable progress toward the return of the minors from June 10, 2013, to March 10, 2014. In particular, the trial court relied on the father's cancelled visits, refusal to comply with urine drug screens, and limited participation in family counseling to conclude that there was no demonstrable movement

toward the goal of reunification. Following a best interest hearing, the trial court found that it was in the best interest of the minors to terminate the mother's and the father's parental rights. The father appealed the termination of his parental rights, challenging the finding of unfitness.

¶ 9

ANALYSIS

¶ 10

The father argues that the trial court abused its discretion in admitting hearsay evidence, specifically, the exhibit from Children's Home that contained forms that originated from Proctor First Care and Weber's testimony regarding the receipt or non-receipt of those forms. The father also argues that the trial court's finding that he was unfit for failing to make reasonable progress toward the return of the minors during the relevant time period was against the manifest weight of the evidence. The father does not raise any issue with regard to the best interest hearing.

¶ 11

The admissibility of evidence is within the sound discretion of the trial court, and a reviewing court will not disturb evidentiary determinations absent a clear abuse of discretion. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 28. In this case, the records from Children's Home, which included the drug drop results from Proctor First Care were admitted as properly certified and delegated records of an agency pursuant to section 2-18 of the Juvenile Court Act, 705 ILCS 405/2-18 (2014). Section 2-18(4)(a) of the Juvenile Court Act provides, in pertinent part:

“Any writing, record, photograph or x-ray of any hospital or public or private agency, whether in the form of an entry in a book or otherwise, made as a memorandum or record of any condition, act, transaction, occurrence or event relating to a minor in an abuse, neglect or dependency proceeding, shall be admissible in evidence as proof of that condition, act, transaction, occurrence or event, if the court finds that the document was made in the regular course of the business of the hospital or agency and that it was in the

regular course of such business to make it, at the time of the act, transaction, occurrence or event, or within a reasonable time thereafter.” 705 ILCS 405/2–18(4)(a) (West 2014).

The hearsay exception contained in section 2-18 of the Juvenile Court Act has been found applicable to termination proceedings under the Adoption Act . *In re Precious W.*, 333 Ill. App. 3d 893, 900 (2002). Here, the records from Children’s Home contained a “Certification and Delegation of Authority” that certified that the records were made in the regular course of business. Thus, we conclude that the records from Children’s Home, including reports of drug drops done at an outside agency, were admissible under section 2-18(4)(a) of the Juvenile Court Act.

¶ 12 The father cites to *In re A.B.*, 308 Ill. App. 3d 227 (1999), for the proposition that Weber was prohibited from testifying as to the contents of the State's Exhibit 1 since the records speak for themselves. The appellate court in *In re AB* found that client service plans were properly admitted into evidence in a termination proceeding under the business records exception to the hearsay rule. *In re A.B.*, 308 Ill. App. 3d at 235. The court went on to hold that it was the business record itself that was admissible, so allowing the caseworker to testify regarding the contents of those records was in error because the records spoke for themselves. *Id.* at 236. However, while the procedure of allowing “lengthy testimony regarding...specific contents from witnesses who did not author the documents” was in error, it was not reversible error because the records, by themselves, were sufficient to establish at least one ground of parental unfitness. *Id.* at 237. We reach the same conclusion in this case. The trial court did not abuse its discretion in admitting the State’s Exhibit 1 under the business record exception to the hearsay rule. To the extent that Weber testified as to the specific contents of the exhibit, the father suffered no

prejudice because the evidence was contained in the exhibit and Weber's testimony was merely redundant.

¶ 13 The father argues that the trial court's finding that he was unfit for failing to make reasonable progress toward the return of the minors was against the manifest weight of the evidence because the trial court failed to consider the father's limitations that led to cancelled visits and counselling sessions. Section 1(D)(m)(ii) of the Adoption Act provides that a parent is unfit for failing "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor." 750 ILCS 50/1(D)(m)(ii) (West 2014). Reasonable progress is judged by an objective standard, which is measured by the amount of progress from the conditions existing at the time custody was taken from the parent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). At a minimum, reasonable progress requires some measurable or demonstrable movement toward the goal of return of a child, and takes into consideration a parent's compliance with the service plans and the court's directives, in light of the conditions that gave rise to the removal of the child. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17. Reasonable progress is a different ground for finding a parent unfit than a parent's failure to make reasonable efforts to correct the conditions that were the basis for the removal. See 750 ILCS 50/1(m)(i), (ii) (West 2014). Reasonable efforts are judged by a subjective standard based upon the amount of effort that is reasonable for a particular person. 750 ILCS 50/1(D)(m)(i) (West 2014). A parent has made reasonable progress when the trial court can conclude that the parent's progress in complying with directives given for the return of the child is of such quality that the court will be able to order the child returned to the parent in the near future. *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17 (citing *Daphnie E.*, 368 Ill.App.3d at 1067).

¶ 14 The State must prove unfitness by clear and convincing evidence. *In re J.H.*, 2014 IL App (3d) 140185, ¶ 22. The trial court's findings of unfitness are accorded great deference on review and will not be reversed unless they are against the manifest weight of the evidence. *Id.*

¶ 15 In this case, the trial court found the father unfit for failing to make reasonable progress toward the return of the minors from June 10, 2013 to March 10, 2014. During that period, the father had complied with some of his court-ordered tasks, including maintaining stable housing and employment. However, the father cancelled more than a third of his visits with the minors, which were only scheduled for one hour, once a week. Also, although he attended family counselling with the three older minors, the records indicate that very little progress was made. As for the alcohol screening, taking into account the funding issues, there was still evidence that the father missed one-half of the required breathalyzer tests and then refused to do urine drops altogether. A missed breathalyzer or urine drop that has not been excused is the equivalent of a positive result according to the testimony of the caseworker. Based on this evidence the trial court's finding that the father failed to make reasonable progress toward the return of the minors during the relevant nine-month period was not against the manifest weight of the evidence.

¶ 16 CONCLUSION

¶ 17 The judgment of the circuit court of Peoria County is affirmed.

¶ 18 Affirmed.