2015 IL App (3d) 150004-U

Order filed May 13, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re Z.C.,	)	Appeal from the Circuit Court
	)	of the 14th Judicial Circuit,
Minor	)	Rock Island County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0004
	)	Circuit No. 12-JA-4
v.	)	
	)	
Christa K.,	)	The Honorable
	)	Theodore G. Kutsunis,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Carter and O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness finding was not against the manifest weight of the evidence, and the court committed no error in terminating respondent's parental rights.

¶ 2 Respondent, Christa K., appeals from the judgment of the circuit court finding her to be an unfit parent of her minor child, Z.C., and terminating her parental rights. On appeal, she

argues that the trial court's finding of unfitness and its decision to terminate her parental rights were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 Christa K. is the mother of three-year-old Z.C. On January 19, 2012, when Z.C. was two months old, the State filed a petition for adjudication of wardship alleging that Z.C. was a dependent minor in that respondent had been arrested on three outstanding warrants. The petition stated that no relative placement was available and asked that Z.C. be made a ward of the court.

¶ 5 At the first appearance hearing on January 19, 2012, respondent acknowledged that she would be unable to care for Z.C. because she was in jail. A staff member for the Department of Children and Family Services (DCFS) informed the court that Z.C. would remain in foster care. Respondent also stated that she would be transferred to the Scott County jail in Iowa within a few days. On February 7, 2012, the trial court entered an adjudicatory order finding Z.C. dependent based on respondent's stipulations.

¶ 6 On March 2, 2012, the trial court entered a dispositional order adjudicating Z.C. a ward of the court and placing custody and guardianship with DCFS. The court found that reasonable efforts and appropriate services aimed at family reunification could not eliminate the need for removal of Z.C. from the home due to respondent's incarceration in Iowa. The court placed custody with foster care and noted that visitation was at the discretion of DCFS. The court also admonished respondent that she was required to cooperate with DCFS, comply with the service plan and correct the conditions that required Z.C. to be in foster care, or she risked termination of her parental rights. In a supplemental order, the court ordered respondent to (1) attend and successfully complete parenting classes, (2) obtain a substance abuse evaluation and follow any

recommendations for treatment, including random drug testing, (3) obtain psychological and psychiatric evaluations, and (4) follow all recommendations for treatment and take all prescribed medications.

¶ 7 At a February 21, 2014, hearing, DCFS supervisor Barbara Crandall testified that respondent had physical visitation with Z.C. in her home, which had increased to twice weekly for four hours. Crandall also indicated that DCFS had noted sustained improvement in respondent over time but that respondent was complacent with her mental health issues. She stated that respondent was anxious to get custody of Z.C. and had good parenting skills. The trial court found that respondent was making reasonable efforts and progress and entered an order with a goal of returning the child home within 12 months.

¶ 8 At the permanency review hearing on May 23, 2014, respondent's attorney indicated that DCFS had recommended that the goal be changed to substitute care pending termination. Counsel noted that respondent was in custody on several criminal charges but opposed the goal change and asked that the court wait until respondent's criminal case was resolved. The prosecutor acknowledged that respondent had made progress. However, he noted that Z.C. had been in foster care all of her life. The prosecutor acknowledged that filing a termination petition was premature but supported DCFS's recommendation for a goal change. In addition, the *guardian ad litem* noted that Z.C. had been in care for a long time and observed that, even if respondent were acquitted of the criminal charges, she would still spend a significant amount of time in custody and would be unable to successfully complete any treatment programs. He agreed that a change of goal would be appropriate.

¶ 9 The trial court found that respondent would not be able to make progress on the service plan while she awaited trial in the criminal case. The court therefore changed the goal to

substitute care pending termination and found that respondent had not made reasonable efforts or progress during the relevant period.

¶ 10 On October 28, 2014, the State filed a petition to terminate respondent's parental rights to Z.C., alleging that she was unfit for failing to (1) maintain a reasonable degree of interest, concern or responsibility as to Z.C.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for Z.C.'s removal during any nine-month period following the adjudication of dependency, specifically March 2, 2012, through December 2, 2012, and January 28, 2014, through October 28, 2014; and (3) make reasonable progress toward Z.C.'s return to her care during any nine-month period following the adjudication of dependency, specifically March 2, 2012 through December 2, 2012, and January 28, 2014, through October 28, 2014. The State further alleged termination of respondent parental rights was in Z.C.'s best interest.

¶ 11 The termination petition alleged that during the first nine-month period respondent had been in and out of jail until the end of June 2012 and that she had been dropped from the substance abuse program for lack of attendance. It also claimed that respondent failed to obtain a psychological evaluation and failed to complete a parenting course. The petition alleged that during the second nine-month period, respondent was arrested, convicted of three crimes and sentenced to three years in prison, and that she had been incarcerated since April 17, 2014.

¶ 12 At the fitness hearing on the termination petition, Sherry Koerperich testified that she was the caseworker assigned to the case from January 2012 to February 2013. She indicated that Z.C. had been taken into protective custody a few months after her birth following respondent's arrest. Koerperich created the initial service plan and recommended that respondent engage in mental health treatment. During the initial nine-month period, respondent had been incarcerated for the first few months. She was released from the Scott County jail in April of 2012, but was

arrested again in June of 2012 and was in jail for one month. In the fall of 2012, respondent completed a drug and alcohol evaluation but failed to attend group therapy and was dropped from the program. At a December 2012 assessment, respondent admitted that she was still using marijuana. Koerperich testified that respondent had multiple drug and alcohol evaluations during this period but failed to follow through with the recommended services. Respondent also failed to obtain the ordered psychological evaluation. Respondent did have a psychiatric assessment in October of 2012, and she attended her first appointment on November 7, 2012. Koerperich stated that during the initial nine-month period, respondent did almost nothing until the end of the period.

¶ 13 Kelly Veronda testified that she was the caseworker currently assigned to Z.C.'s case and had been the assigned caseworker since February 2013. Veronda affirmed that during the second nine-month period alleged in the petition, January 28, 2014, through October 28, 2014, respondent had been making progress in the service plan. She testified that respondent's mental health was more stable and her visits with Z.C. had been increased. She agreed that Z.C. likely would have been returned had respondent continued her progress. Veronda stated, however, that in April 2014 respondent was arrested on multiple felony and misdemeanor charges involving a domestic disturbance issue. Respondent was upset about a romantic relationship and drove to a friend's house, even though she did not have a valid driver's license. She damaged property and struck an officer. She was arrested a few days later. Respondent was convicted of the charges, sentenced to three years in prison and remained incarcerated. Veronda testified that, given respondent's incarceration, a return home goal was inappropriate.

¶ 14 On cross-examination, Veronda stated that respondent's parole date was set for October 2015, and that if she received good-time credit she could be released sooner. Veronda affirmed

that respondent completed a psychological evaluation in February of 2013 and outpatient drug and alcohol treatment in November 2013. Respondent also completed anger management and parenting classes after Veronda was assigned to the case. On cross-examination by the GAL, Veronda testified that Z.C. had not been returned to respondent's home from December 2, 2012, through January 20, 2014 and she had been in foster care since the inception of the case.

¶ 15 Respondent testified that in the first nine-month period she had trouble completing services. During the first four months she was in jail on warrants that had issued prior to Z.C.'s birth. She rode the bus to get to her appointments because she did not have a vehicle. Occasionally, she missed the bus and had to cancel the appointments, but she rescheduled the ones she missed. Respondent admitted that she had been arrested and jailed again in April of 2014. On cross-examination, respondent admitted that her criminal history predated Z.C.'s birth and continued after her birth. She testified that while she was incarcerated in 2012, she contacted Z.C.'s foster mother and wrote letters and sent pictures. During her current incarceration, respondent had not been in contact with the foster parents and she had not contacted the caseworker.

¶ 16 The trial court noted that there had been delays in getting services started and that respondent had made some effort. However, the court concluded that the State had proved by clear and convincing evidence that respondent was unfit. The court found that the evidence demonstrated that respondent (1) failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare, (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal during the nine-month period of January 28, 2014 through October 28, 2014, and (3) failed to make reasonable progress toward the return of the child during the same nine-month period.

¶ 17 At the best interest hearing, Becky Howell testified that she was Z.C.'s foster mother. Z.C. was three years old at the time of the hearing and had been placed in Howell's care when she was two months old. Howell has three adopted children and one biological child who are all grown and no longer live with her. She also has two foster children, ages two and five, who live in the home. All of the children have their own bedrooms. Howell has extended family in the area. Her family has a strong relationship with Z.C., and the children have accepted her as a sibling. Z.C. calls Howell "Becky" because respondent had requested that she not be allowed to call her "Mom." Howell is an active church member, and Z.C. attends Sunday school every week. Z.C.'s day care providers live across the street. She calls them Grandma and Grandpa. Howell testified that Z.C. has no medical issues and she is current on her immunizations. Howell and Z.C. have a close bond, and Z.C. looks to Howell for comfort. Howell stated that when Z.C. was initially placed with her, she had a lot of contact with respondent, but she has not heard from her in "quite some time." Howell testified that if she were to adopt Z.C., she plans to maintain contact with respondent and allow Z.C. to communicate with her as long as respondent makes good decisions. Howell intends to adopt Z.C. if respondent's parent rights are terminated.

¶ 18 The trial court found that it was in the best interest of Z.C. that respondent's parental rights be terminated. The court stated that it had no doubt that both respondent and Howell loved Z.C., but noted that Z.C. was in a good home and was living in the only home she had ever known. The court named DCFS as guardian with the power to consent to adoption.

¶ 19 ANALYSIS

¶ 20 I

¶ 21 Respondent claims that the trial court's finding of unfitness was against the manifest weight of the evidence.

¶ 22 A trial court may involuntarily terminate parental rights where (1) the State proves, by clear and convincing evidence, that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and (2) the court finds that termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349 (2005). On review, we will not reverse the trial court's finding that a parent is unfit "unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500 (2011). Additionally, we may affirm the trial court's decision on any basis established in the record. *In re K.B.*, 314 Ill. App. 3d 739, 751 (2000).

¶ 23 In this case, the trial court found that respondent was unfit in (1) failing to maintain a reasonable degree of interest, concern or responsibility as to Z.C.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failing to make reasonable efforts to correct the conditions that were the basis for the removal of Z.C. during the nine-month period following the dependency adjudication from January 28, 2014 through October 28, 2014 (750 ILCS 50/1(D)(m)(i) (West 2012)); and (3) failure to make reasonable progress toward the return of Z.C. during the same nine-month period (750 ILCS 50/1(D)(m)(ii) (West 2012)). We find sufficient evidence was presented to show respondent failed to make reasonable progress toward Z.C.'s return from January 28, 2014, through October 28, 2014.

¶ 24 In deciding whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period. *J.L.*, 236 Ill. 2d at 341. The appropriate inquiry for measuring a parent's "progress toward the return of the child" under section 1(D)(m) of the Adoption Act involves measuring the parent's compliance

with the service plans and the court's directives, in light of the condition which gave rise to the removal and conditions which later become known and would prevent the court from returning custody of the child to the parent. *In re C.N.*, 196 Ill. 2d 181, 216-17 (2001). "Reasonable progress" is an objective standard which exists when the court, based on the evidence before it, can conclude that "the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991). Returning the child to the parent in the near future is a viable goal because the parent will have fully complied with the service plan and directives previously implemented. *Id*.

¶ 25 Here, the evidence was sufficient to show respondent unfit for failing to make reasonable progress toward Z.C.'s return to her care from January 28, 2014, to October 28, 2014. The record shows Z.C. was removed from respondent's care in January of 2012, when Z.C. was approximately two months old, because respondent had been arrested and taken into custody. In January of 2014, respondent was successfully completing several services and appeared to be committed to regaining custody of her daughter. But her progress in the months that followed was hindered by her own conduct and poor choices, which prevented her from completing the directives ordered by the court. In April of 2014, respondent was again incarcerated for committing multiple criminal offenses. Although respondent had shown a strong desire to participate in the required services, she was unable to be a consistent presence in Z.C.'s life. Moreover, even though respondent sought mental health counseling, her progress was slow. As the trial court noted, respondent made some efforts to engage in services. However, due to the length of respondent's current incarceration, the caseworkers were unable to say that in the

reasonably near future Z.C. could be returned to respondent's care with the knowledge that she would be in a safe and stable environment. Under these circumstances, an opposite conclusion from that of the trial court is not clearly evident. Thus, the court's finding of unfitness was not against the manifest weight of the evidence.

¶ 26 II

¶ 27 Respondent also argues that the trial court erred in finding that it was in Z.C.'s best interest to terminate her parental rights.

¶ 28 At the best interest hearing, all considerations must yield to the best interest of the minor. *In re G.L.*, 329 Ill. App. 3d 18, 24 (2002). It is the State's burden to prove by a preponderance of the evidence that terminating parental rights is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). The trial court must consider several statutory factors, including: (1) the minor's physical safety and welfare; (2) the development of the minor's identity; (3) the minor's familial, cultural, and religious background and ties; (4) the minor's sense of attachment and continuity of relationships with parental figures; (5) the minor's wishes; (6) the minor's community ties; (7) the minor's need for permanence; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of persons available to care for the minors. 705 ILCS 405/1-3(4.05) (West 2010). We will not disturb the trial court's best interest ruling unless it is contrary to the manifest weight of the evidence. *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005).

¶ 29 Our review of the record indicates that the State proved by a preponderance of the evidence that it was in Z.C.'s best interest to terminate respondent's parental rights. Howell testified that Z.C. had been living with her for almost three years, nearly her whole life. In addition to her foster mother, Z.C. lives with two other foster children. She has formed a strong

bond with her foster siblings and her extended foster family. Caseworkers testified that Z.C.'s foster home is a safe and supportive environment and that Z.C. is emotionally attached to her foster mother, Howell. Based on this record, we find no error in the trial court's decision that it was in the best interest of Z.C. that respondent's parental rights be terminated.

¶ 30 CONCLUSION

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

¶ 32 Affirmed.