2015 IL App (3d) 150310-U

Order filed September 1, 2015

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IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

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| *In re* L.S., Jr., | ) | Appeal from the Circuit Court |
| | ) | of the 14th Judicial Circuit, |
| a Minor | ) | Rock Island County, Illinois, |
| | ) | |
| (The People of the State of Illinois, | ) | |
| | ) | |
| Petitioner-Appellee, | ) | Appeal No. 3-15-0310 |
| | ) | Circuit No. 13-JA-71 |
| v. | ) | |
| | ) | |
| LaShan S., | ) | |
| | ) | The Honorable |
| Respondent-Appellant). | ) | Theodore G. Kutsunis, |
| | ) | Judge, Presiding. |

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

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**ORDER**

¶ 1 *Held*: The appellate court affirmed the circuit court's finding of parental unfitness and the termination of the respondent's parental rights. However, the appellate court vacated the portion of the circuit court's judgment that found the respondent unfit for failing to make reasonable efforts or reasonable progress. This was due to the fact that the termination petition's nine-month period began with a date prior to the date the minor was adjudicated neglected, which resulted in the respondent

not being given a full nine months to show reasonable efforts or reasonable progress.

¶ 2 The circuit court entered orders finding the respondent to be an unfit parent and terminating the respondent's parental rights to the minor, L.S., Jr. On appeal, the respondent argues that the circuit court erred when it found him to be an unfit parent. We affirm in part and vacate in part.

¶ 3 FACTS

¶ 4 On December 2, 2013, the State filed a juvenile petition alleging that the minor was neglected by reason of an injurious environment.[1] The petition alleged that the minor was born on November 8, 2013, with metabolites of cocaine and heroin in his cord blood and that his meconium tested positive for codeine and morphine. The petition also alleged that the minor had two siblings who had previously been adjudicated neglected, and that both the mother and the respondent had been found to be unfit parents with regard to the minor's siblings.

¶ 5 Because the respondent had been involved with the Department of Children and Family Services at the time of the minor's birth, a service plan had already been in place, to which the minor was added. The service plan noted that the respondent had been found unfit with regard to the minor's siblings on August 5, 2013, after the circuit court found that the respondent had not made reasonable progress or efforts on his service plan tasks, which included: (1) demonstrating positive parenting skills by attending visitation, completing parenting education classes, demonstrating appropriate parenting skills, and providing necessities for the minor's siblings during visits to show that he could recognize and meet those needs; (2) obtaining and

[1] The State amended the juvenile petition on March 7, 2014, but the substance of the petition remained the same.

maintaining appropriate housing; (3) completing a substance abuse evaluation and following any associated recommendations; (4) completing domestic violence counseling; (5) completing a psychiatric evaluation and following any associated recommendations; and (6) obtaining a legal form of income. The respondent was evaluated on these tasks on November 27, 2013, and was given unsatisfactory ratings on all of his tasks, as he had not visited with the minor's siblings in the past six months, he had no contact with the caseworker since March 5, 2012, and he had not signed releases of information. The evaluation also noted that the caseworker performed a search on October 1, 2013, that did not return an address for the respondent.

¶ 6 The respondent was evaluated again on his tasks on January 9, 2014, and was given unsatisfactory ratings on all of his tasks. Among other things, the evaluation noted that the respondent provided the caseworker an address in Davenport, Iowa, in court on December 2, 2013, but mail sent by the caseworker to that address had been returned. Also, the evaluation noted that the respondent's address had not been verified because "a critical decision was made that it is unsafe for this worker to go to LaShan's home, due to the potential for LaShan to physically assault this worker, as he has been physically threatening to this worker in the past, to the point that three police officers had to remove him from this worker's presence." The evaluation also noted that the respondent had not signed any releases of information and had not visited with the minor "per his choice." The respondent also did not attend an integrated assessment that had been scheduled for January 2, 2014.

¶ 7 The circuit court held an adjudicatory hearing on the juvenile petition on March 28, 2014. At the conclusion of that hearing, the court found that the evidence established that the minor was neglected. However, the court stated:

> "The Court will not make any adjudication at this time. Rather, we'll continue the matter over for an adjudicatory, slash, dispositional hearing since a continuance under supervision is a possibility. But I do find that the State has met its burden as to establishing by a preponderance of the evidence the requirements that are necessary for the finding that there is neglect."

¶ 8 The circuit court held a dispositional hearing on May 6, 2014. After the hearing, the court issued a written order on a pre-printed form in which it, *inter alia*, entered the adjudication of neglect by checking the associated box.

¶ 9 The respondent was evaluated again on his tasks on May 27, 2014, and he received unsatisfactory ratings on all of his tasks. The evaluation noted that the respondent had not had any contact with the caseworker.

¶ 10 A report prepared on June 2, 2014, for a permanency review hearing noted that the respondent had not had any contact with the caseworker, and that another search had been done in April for an address for the respondent, but the search returned no results. He also received unsatisfactory ratings on all of his tasks.

¶ 11 A report prepared on August 28, 2014, for a permanency review hearing noted that the respondent had been arrested on drug-related charges on July 8, 2014. He also received unsatisfactory ratings on all of his tasks.

¶ 12 A report prepared on November 25, 2014, for a permanency review hearing noted that the respondent had been convicted on a drug-related charge on October 28, 2014. He had not signed any releases of information and was given unsatisfactory ratings on all of his tasks.

¶ 13 A report prepared on January 6, 2015, for a permanency review hearing included unsatisfactory ratings for the respondent on all of his tasks.

¶ 14 On January 21, 2015, the State filed a petition to terminate the respondent's parental rights. The petition alleged that the respondent: (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; (2) failed to make reasonable efforts to correct the conditions that led to removal, the nine-month period for which was March 28, 2014, through December 28, 2014; (3) failed to make reasonable progress toward the return of the minor, the nine-month period for which was March 28, 2014, through December 28, 2014; and (4) evidenced an intent to forgo his parental rights, which the State supported through six different allegations.

¶ 15 The circuit court held a hearing on the termination petition on March 27, 2015. Caseworker Cynthia Felske testified in accord with the evaluations and reports completed for the various stages of the case. She stated that all mail sent to the respondent at the Davenport, Iowa, address he gave was returned. She also tried calling the phone number at that address; when the calls were answered, the individual answering would say the respondent was not there. She said that most of the time, there was no voicemail for her to leave a message, and that the number eventually was no longer in service. He did not participate in an integrated assessment, had not signed releases of information, and had not visited with the minor. The only time she was able to meet with him was when they were in court for hearings in this case. She did not ever ask a police officer to accompany her to the respondent's Davenport, Iowa, address, and did not know if doing so was an option.

¶ 16 The respondent testified that due to the cases involving his other children, he was aware of the service plan tasks that he was required to complete with regard to the minor. Prior to his

arrest in July 2014, he was living by himself in an apartment on 6th Street in Davenport, Iowa; he could not remember the specific address. At the time the minor was taken into protective custody in the hospital, he gave someone at the hospital the address of the apartment; he did not know if that person was from the agency. No one from the agency ever came to his apartment to see him.

¶ 17 The respondent stated that he called the agency's main phone number four or five times and left messages for Felske. He never received any calls back from the agency. He also stated that the minor's mother was keeping him abreast of what was going on with the case. He testified that he bought clothes for the minor and gave them to the minor's mother to take to visits. He asked both his attorney and Felske for pictures of the minor and updates on the case. He communicated with Felske through face-to-face contact at the courthouse. He never received any written communication from the court or from the agency at his apartment in Iowa. He was also never asked for consent to release information.

¶ 18 On cross-examination, he stated that since the minor's birth, he never visited with the minor, had not obtained a new psychiatric evaluation, and had not attended individual or domestic violence counseling. He did not attend any parenting classes, but he had signed up for them after he was incarcerated. He also completed a substance abuse evaluation in February 2015 at the jail. When asked about his failure to visit with the minor, the respondent stated that he had been working and that he tried to set up visits, but did not receive calls back from the agency.

¶ 19 Felske was recalled as a rebuttal witness and stated that she mailed releases to the respondent at his Davenport address, but they were returned with notes that the respondent did not reside at that address. She also stated that she handed him several releases before one of the

hearings; he said he wanted to look them over, but he never returned them. She also mailed court reports to him at that Davenport address. She also sent mail to him in jail after his incarceration, but nothing ever came back to her. This mail included court reports, the service plan, and pictures of the children.

¶ 20 Felske also stated that when someone calls the agency's main number for her to leave a message, the call would be transferred to her voicemail; a message would not be left with someone else. She stated that she never received a voicemail or written communication from the respondent since the start of the minor's case.

¶ 21 The respondent was recalled as a rebuttal witness and stated that he had never received any mail from Felske or the agency at the jail since his incarceration.

¶ 22 At the close of that hearing, the court found that the State proved, by clear and convincing evidence, all four of the allegations contained in the termination petition. The court found that the respondent failed to maintain a reasonable amount of interest, concern, or responsibility as to the minor's welfare. The court noted that the respondent had not visited with the minor. The court also found it significant that he had been incarcerated for unlawful possession of a controlled substance with intent to deliver, as the minor had been removed from the parents' care for having drugs in his system. The court also noted that the respondent had no communication or contact with the agency, and that he showed up in court for the temporary custody hearing (which the record indicates was in December 2013), but did not show up in court again until after he was arrested in July 2014.

¶ 23 The circuit court held a best interest hearing on April 15, 2015, at the conclusion of which the court found that it was in the minor's best interest to terminate the respondent's parental rights.

¶ 24 The respondent appealed.

¶ 25 ANALYSIS

¶ 26 On appeal, the respondent argues that the circuit court erred when it found him to be an unfit parent. Specifically, the respondent contends, *inter alia*, that: (1) he maintained a reasonable degree of interest, concern, or responsibility toward the minor's welfare; and (2) he was not given a full nine months to demonstrate reasonable efforts and reasonable progress.

¶ 27 Proof of only one statutory ground of unfitness is all that is required to find a parent unfit. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. The State bears the burden of proving a parent is unfit by clear and convincing evidence, and we will not disturb a circuit court's unfitness finding unless it is against the manifest weight of the evidence. *Id.*

¶ 28 One ground upon which a parent may be found unfit is if the parent fails "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2014). The disjunctive used in the statute means that a parent can be found unfit for failing to maintain a reasonable degree of any of the provision's three elements. *In re C.E.*, 406 Ill. App. 3d 97, 108 (2010). When analyzing whether a parent has maintained a reasonable degree of interest, concern, or responsibility as to the minor's welfare, the parent's conduct must be considered in relation to the parent's circumstances. *Id.* "Relevant circumstances include, for example, difficulty in obtaining transportation, the parent's poverty, statements made by other to discourage visitation, and whether the parent's lack of contact with the children can be attributed to a need to cope with personal problems rather than indifference towards them." *Id.* at 109. Other factors to consider include inquiries a parent made into the minor's welfare and efforts made by the parent to visit and maintain contact with the minor. *Id.* at 108.

¶ 29 Our review of the record in this case reveals no error in the circuit court's determination that the respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare. The minor in this case was born on November 8, 2013, and was removed from the parents' care because he had drugs in his system. The respondent already had a service plan in place at that time for his other two children. His tasks remained the same with regard to this minor, and he received unsatisfactory ratings on all of those tasks with regard to the minor. He had no contact with the caseworker between December 2013 and at least July 2014. While he provided an address to the caseworker, mail sent to that address was returned. The caseworker attempted to contact the respondent by phone as well, but was unsuccessful. Significantly, he did not visit with the minor.

¶ 30 Despite the fact that the minor was removed due to having drugs in his system, the respondent was arrested on drug-related charges in July 2014. While he met with the caseworker at court dates subsequent to that arrest, the respondent continued to fail to sign releases of information.

¶ 31 Implicit in the circuit court's unfitness determination was a finding that the respondent was not a credible witness. We note that the circuit court is in the best position to weigh the evidence presented and assess the credibility of witnesses (*Id.* at 108-09), and we have found no reason in the record tending to reject the court's implicit credibility finding. While the respondent testified that he tried calling the agency four or five times regarding the minor, Felske's statements tended to refute that testimony, as her explanation of office procedure regarding phone calls was substantially different from what the respondent described as his contact experience. Thus, contrary to the respondent's claim on appeal, there appeared to be no reason attributable to the agency for any lack of contact with the respondent and any resultant

failure of visitation. The manifest weight of the evidence reflects that the onus for the lack of communication was on the respondent.

¶ 32 Under these circumstances, we hold that the circuit court's finding that the respondent failed to maintain a reasonable degree of interest, concern, or responsibility toward the minor's welfare was not against the manifest weight of the evidence. Accordingly, we hold that the circuit court's unfitness determination was not erroneous.

¶ 33 Even though we have found that the circuit court's finding of unfitness was proper, we still must address the respondent's claim that he was not given a full nine months to demonstrate reasonable efforts and reasonable progress. The State concedes the respondent's argument.

¶ 34 The record indeed reflects that the respondent was not given a full nine months to demonstrate reasonable efforts or reasonable progress. The termination petition's defined nine-month period was from the date of the adjudicatory hearing (March 28, 2014) through December 28, 2014. However, the circuit court did not adjudicate the minor neglected until May 6, 2014. Because the statutory nine-month period for reasonable efforts and reasonable progress does not begin until the date of adjudication (750 ILCS 50/1(D)(m) (West 2012)), the respondent could not have been found unfit for failing to make reasonable efforts or reasonable progress. Accordingly, we vacate that portion of the court's judgment that found the respondent unfit for failing to make reasonable efforts or reasonable progress. In all other respects, we affirm the court's judgment finding that the respondent was unfit and terminating his parental rights.

¶ 35 CONCLUSION

¶ 36 The judgment of the circuit court of Rock Island County is affirmed in part and vacated in part.

¶ 37 Affirmed in part and vacated in part.