2015 IL App (3d) 150452-U

Order filed October 16, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re J.I. and M.I.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal Nos. 3-15-0452
	)	3-15-0453
v.	)	Circuit Nos. 10-JA-188
	)	10-JA-189
E.I.,	)	
	)	
Respondent-Appellant).	)	Honorable Albert L. Purham, Jr.
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice McDade and Justice O'Brien concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's termination of respondent's parental rights. The court's findings that respondent: (1) failed to make reasonable progress toward the return of the minors; and (2) failed to maintain a reasonable degree of interest, concern or responsibility as to the minors were not against the manifest weight of the evidence.

¶ 2 In May 2014, the State filed separate petitions to terminate the parental rights of respondent, E.I., as to her daughters, J.I. (born December 20, 2004) and M.I. (born October 19,

2007). Following a February 2015 fitness hearing, the trial court found respondent unfit. In May 2015, the court conducted a best interest hearing and, thereafter, terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing: (1) the State failed to prove she did not make reasonable progress toward the return of the minors; and (2) the State failed to prove she did not maintain a reasonable degree of interest, concern or responsibility in the minors. We disagree and affirm.

¶ 4 BACKGROUND

¶ 5 I. Events Prompting the State's Motion to Terminate Parental Rights

¶ 6 In July 2010, the State filed separate petitions for adjudication of wardship, alleging that J.I. and M.I. were neglected minors under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2014)). The State claimed that the living environment provided for J.I. and M.I. by respondent was injurious to the minors' welfare. The petition was based on several factors. Specifically, respondent had three prior indications by the Department of Children and Family Services (DCFS) with the minors (twice for inadequate supervision and once for substantial risk of health and welfare by neglect). Respondent admitted that she was "overwhelmed" in caring for her children—at the time she had four total—and she professed an inability to keep up with their basic hygiene or engage in the routine cleaning of her home. Respondent had also been letting other people care for the minors for extended periods of time—including two adults found unfit to parent. The State further explained that in spite of being given a number of services through DCFS, respondent had either been uncooperative or unable to develop her parenting skills. The minors' fathers, both with criminal histories, were unwilling or unable to care for them.

¶ 7 At a September 2010 adjudicatory hearing, the trial court found that J.I. and M.I. were neglected minors. In October 2010, the minors were made wards of the court and DCFS was appointed guardian, but respondent and the minors' fathers were found to be fit parents, and placement was deemed unnecessary. In a written order, respondent was ordered by the court to modify her behavior in a few basic ways and engage in services with DCFS. Most prominently, respondent was told to cooperate with DCFS and follow any of its recommendations, have a psychological evaluation, obtain counseling regarding her parenting issues, maintain housing conducive to the safety and healthy rearing of the minors, cooperate with an individualized family service plan, provide her DCFS caseworker with change of contact information within three days of moving, and report and provide to DCFS the basic biographical information of any additional household members in her residence.

¶ 8 Over the next three years, after extensive hearings and attempts to allow respondent to comply with the court's orders and seek assistance from social service agencies, respondent was found unfit. The minors subsequently were placed in foster care as a matter of urgent necessity in October 2013. In May 2014, the State filed separate petitions to terminate respondent's parental rights to J.I. and M.I. pursuant to the Adoption Act (750 ILCS 50/1(D) (West 2014)). Specifically, the State alleged that respondent: (1) failed to make reasonable progress toward the return of the minors to her home from August 1, 2013, to May 1, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2014)); and (2) respondent did not maintain a reasonable degree of interest, concern or responsibility as to the minors' welfare (750 ILCS 50/1(D)(b) (West 2014)).

¶ 9 II. The Fitness Hearings

¶ 10 Respondent's fitness hearing took place over two sessions in December 2014 and February 2015. The State's factual basis revealed a lengthy series of hearings in the wake of the

minors' adjudication as neglected minors in September of 2010 through the time of the fitness hearing. From March 2011 to October 2014, there were at least nine separate hearings, most of which were for permanency. Brenda Lee, a DCFS caseworker testified to the findings from her dispositional reports authored beginning in August 2011, when she took over as respondent's caseworker. The findings of the permanency hearings and Lee's dispositional reports reveal respondent's consistent failure to make reasonable progress toward the return of J.I. and M.I. from August 2013 to May 2014, and her failure to maintain a reasonable degree of interest, concern or responsibility in the minors' welfare throughout the proceedings, especially after May 2013.

¶ 11 Initially, from September 2011 to May 2013, respondent received "mixed" ratings for her progress or was actually deemed to be making reasonable progress toward the return of the minors to her home. In October 2013, however, Lee reported that respondent had moved several times without informing her or providing her with the new address, had lied to her about other people living in the household and refused to furnish their biographical information, and was failing to provide the minors with routine medical care. After the minors were placed in DCFS care as a matter of immediate and urgent necessity, respondent ceased to even attempt to make reasonable progress and, in fact, outwardly refused to cooperate with DCFS or participate in services.

¶ 12 Lee testified that respondent had access to public transportation at all times relevant, provided to her by DCFS or other agencies. She stated that respondent sporadically, at best, showed up for or scheduled visitations with the minors, and respondent did not engage in or cooperate with most of the services she was ordered to complete. Lee further testified that respondent's general demeanor whenever she was confronted with such failures was one of

nonchalance. Respondent merely replied that she was depressed when asked why she did not attend visitations or participate in services. Respondent countered that she had previously submitted to a psychological evaluation and completed one parenting class, but these were both prior to August of 2013.

¶ 13 During the relevant period of August 2013 to May 2014, Lee testified that J.I. had numerous issues with grades, attendance, and not wearing appropriate clothing at school, respondent's home and the minors themselves were infested with lice at one point—which respondent declined to address, and respondent refused to participate in an integrated assessment. Respondent testified that she completed some counseling during this timeframe, estimating that she participated in services for a total three to four months, but failed to complete other requirements such as a "Life Skills" class for "no particular reason."

¶ 14 The trial court found respondent unfit on both counts. At a combined best interest and permanency review hearing in May 2015, the trial court terminated respondent's parental rights to J.I. and M.I.

¶ 15 This appeal follows.

¶ 16 ANALYSIS

¶ 17 I. Standard of Review

¶ 18 At a fitness hearing, the State has the burden of proving parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29 (West 2014); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). When the State seeks to terminate someone's parental rights, each case is "*sui generis* and must be decided based on the particular facts and circumstances presented." *In re D.D.*, 196 Ill. 2d 405, 422 (2001) (citing *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990)). A reviewing court will not overturn a trial court's finding of unfitness in a termination of parental

rights proceeding unless it is against the manifest weight of the evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. The trial court's finding of unfitness will be given great deference due to its superior opportunity to evaluate the credibility of witnesses. *In re Jordan V.*, 347 Ill. App. 3d at 1067. When there are multiple allegations of unfitness, a finding of unfitness can be found on any one statutory ground. *In re D.D.*, 196 Ill. 2d at 422.

¶ 19 II. Failure to Make Reasonable Progress

> "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's 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, 216-17 (2001).

The trial court may only consider evidence occurring during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward return of the children. *In re J.L.*, 236 Ill. 2d 329, 341 (2010). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody *in the near future*." (Emphasis added.) *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006) (citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991)).

¶ 20 Here, we have no evidence that respondent made reasonable progress toward obtaining custody of the children during the relevant nine-month period. Appellant counsel's characterization of respondent's minimal accomplishments as "great strides" does not make it so.

¶ 21 The record before this court establishes that the trial court had ample evidence to conclude that respondent failed to make reasonable progress between August 1, 2013, and May 1, 2014, toward the return of the minors to her home. Counsel highlights on appeal that respondent did complete *some* counseling and did attend *some* of the visitations with her children during the relevant nine-month period. This simply does not outweigh the State's proof that respondent was making insufficient progress toward the return of her children. To the contrary, the record establishes that respondent achieved no measure of stability as required to resume caring for the minors, and that respondent rarely attempted to comply with DCFS or court directives in an effort to facilitate the return of her children. Thus, the trial court's determination of unfitness is not against the manifest weight of the evidence.

¶ 22 III. Failure to Maintain a Reasonable Degree of Interest, Concern or Responsibility

¶ 23 In order to find a parent unfit under section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)), the trial court must find by clear and convincing evidence that the parent failed to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare. See *In re Adoption of L.T.M.*, 214 Ill. 2d 60 (2005). The issue before the trial court is whether a parent's efforts to maintain a reasonable degree of interest, concern or responsibility for the child's welfare was "of a *reasonable* degree" under the circumstances. (Emphasis in original.) *In re Adoption of Syck*, 138 Ill. 2d at 280. A parent's cooperation with social service agencies and service plan objectives can be considered as evidence of a parent's interest, concern, or responsibility as to a minor. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004).

¶ 24 The evidence that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to J.I.'s and M.I.'s welfare throughout the proceedings is overwhelming.

Respondent had been on notice that she needed to cooperate with DCFS since October of 2010. As noted previously, respondent initially attempted to comply with DCFS and received sufficient marks from her caseworker, but respondent's efforts clearly decreased over time—largely becoming nonexistent. The minors were removed from respondent's care in October 2013 and their return to respondent was made contingent upon respondent's cooperation with DCFS. In spite of this, respondent declined to cooperate with DCFS and the other social service agencies involved in her service plan. By April 2014, for example, respondent's caseworker noted that respondent was failing homemaker and life skills classes, not attending visitations with her children, and showing no signs of stability. To date, respondent has completed some counseling as ordered, but declined to participate in or failed to complete all other tasks as ordered by the court.

¶ 25 Respondent also established a spotty track record in visiting the minors, despite being provided with transportation. Moreover, when told by personnel that she needed to change her behavior and make her children a priority, respondent frequently demonstrated a distinct lack of concern for the error of her ways. Accordingly, the trial court's finding that respondent failed to maintain a reasonable degree of interest, concern or responsibility as to the welfare of the minors was not against the manifest weight of the evidence.

¶ 26 CONCLUSION

¶ 27 For the foregoing reasons, the judgment of the circuit court of Peoria County is affirmed.

¶ 28 Affirmed.