2015 IL App (3d) 150529-U

Order filed December 8, 2015

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2015

In re M.E., M.E., & M.E.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
Minors	)	Knox County, Illinois,
	)	
(The People of the State of	)	
Illinois,	)	Appeal Nos. 3-15-0529 & 3-15-0530
	)	Circuit Nos. 12-JA-34 & 13-JA-13
Petitioner-Appellee,	)	
	)	
v.	)	
	)	Honorable
Aris E.,	)	Raymond A. Cavanaugh and
	)	James B. Stewart,
Respondent-Appellant).	)	Judges, Presiding.
	)	

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

ORDER

¶ 1 *Held*: The termination of a mother's parental rights was upheld on appeal because the State proved by clear and convincing evidence through the testimony of a clinical psychologist, supported by the testimony of caseworkers, that the mother suffered from a mental impairment or retardation sufficient to prevent her discharge of normal parental activities and that inability would extend beyond a reasonable time period.

¶ 2 The minors, M.E., M.E., and M.E., were adjudicated neglected. Thereafter, the State filed petitions for the termination of all three fathers' and the respondent mother's parental rights. The circuit court found the petitions to be proven by clear and convincing evidence, and it found that it was in the best interests of the minors that their parental rights be terminated. The respondent mother, Aris E., appealed, challenging the finding of unfitness

¶ 3 FACTS

¶ 4 On December 26, 2012, the State filed a juvenile petition, alleging that two of the M.E. minors (DOB 2/15/2010 and 5/16/2012) were neglected and/or abused primarily due to internal injuries suffered by the older minor that were discovered when he was hospitalized. Both minors were placed in the temporary custody of the Department of Children and Family Services (DCFS). On March 5, 2013, the two minors were adjudicated neglected, and the respondent was admonished that she must cooperate with DCFS and comply with the terms of the service plan. After a dispositional hearing, the respondent and the minors' fathers were found to be unfit. The two M.E. minors were made wards of the court and DCFS was named guardian of the minors. With respect to the respondent, the dispositional order provided that she shall: cooperate with DCFS and designees and sign all necessary consents for release of information; obtain and maintain stable housing conducive to the safety and healthy rearing of the minors, maintain a source of legal income; provide the assigned caseworker the identifying information of any individual requested by DCFS; notify her caseworker of any change of address or telephone number within three days; successfully engage in and complete individual counseling, including domestic violence interventions and counseling that would address her sexual assault; submit to a psychiatric evaluation and follow its recommendations; and complete a parenting course and participate in interactive parenting and coaching during visits with the minors.

¶ 5 On June 18, 2013, a juvenile petition was filed for the third M.E. minor, who was born on June 13, 2013. The petition alleged the same information as the petition for the other two minors, with the additional allegations that the other two minors had been adjudicated neglected and the new baby's father had threatened to harm her while she was in utero. The new baby was adjudicated neglected on August 20, 2013, and after a dispositional hearing, the respondent was found unfit. The respondent was ordered to complete the same services identified in the prior dispositional order, with the additional requirement that she submit to one random drug screen per month.

¶ 6 On May 20, 2014, the State filed petitions to terminate the parental rights of the respondent and the fathers of all three minors. With respect to the respondent, the petitions alleged that she was unfit because she: (1) was unable to discharge her parental responsibilities, supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code,13 or developmental disability as defined in Section 1-106 of that Code,14 and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period, 750 ILCS 50/1(D)(p) (West 2014); and (2) failed to make reasonable progress toward the return of the minors during the nine-month period of April 2, 2013 to January 2, 2014 (the two older minors) and August 20, 2013 to May 20, 2014 (the youngest minor), 750 ILCS 50/1(D)(m)(ii) (West 2014)). The petitions further alleged that it was in the best interest of the minors to terminate all parties' parental rights. The State filed an amended petition to terminate in the case involving the two older minors on October 28, 2014, adding, with respect to the respondent, that she was unfit in that she failed to make reasonable progress toward the return of

the minors during the nine-month period of January 2, 2014 to October 2, 2014. The petition to terminate with respect to the youngest minor was not amended.

¶ 7 At the fitness hearing, the State called Dr. Rudolph Gustof Breitmeyer. Dr. Breitmeyer testified that he had a Ph.D. in clinical psychology and he had been practicing for 46 years. Dr. Breitmeyer was certified to testify as an expert witness in clinical psychology. Dr. Breitmeyer testified that he conducted a psychological evaluation of the respondent in October 2013 pursuant to a referral from DCFS. Dr. Breitmeyer conducted a clinical interview of the respondent and used the Wechsler Intelligence Scale, Fourth Edition, to assess the respondent. He determined that the respondent's cognitive functioning was in the extremely low range, a full-scale of I.Q. of 62, and it was his professional opinion that it would negatively impair her ability to parent. Due to her low cognitive functioning, he also administered the Peabody Picture Vocabulary Test, which measures receptive vocabulary. The respondent's performance on the Peabody test corresponded to that of a child of 8 years, 10 months. The respondent's scores on the Wide Range Achievement Test-4, which measures academic functioning, corresponded to grade equivalents from 2.9 to 4.3. In his report, Dr. Breitmeyer noted that a formal assessment of the respondent's adaptive behavioral functioning/living skills was warranted, however no unbiased individual with sufficient knowledge of the respondent's adaptive behavioral functioning was identified. Although people who are diagnosed with mild mental retardation are not categorically incapable of parenting children, it was Dr. Breitmeyer's opinion that the respondent was not be capable of independently parenting her children and would not be in any reasonable period of time.

¶ 8 Candy Knapp, the Court Appointed Special Advocate (CASA) appointed to the case, testified that she had known the minors for two years. She had observed the minors both with

and without their mother being present. Knapp testified that she noticed that the respondent was always glad to see the minors, but she spent a lot of time on her cell phone. She did not interact very much with the youngest minor, leaving her in the baby seat or on a blanket, but she did occasionally cradle the baby. Knapp testified to an incident where the respondent kicked the walker that one of the minors was sitting in, causing it to move two feet.

¶ 9 Faye Kesselmayer, a therapist for Children's Home Association of Illinois in Peoria, testified that she provided services for the family, including individual therapy for the oldest minor, starting in March 2013. Kesselmayer testified that she did therapeutic visits with the respondent and the minors approximately once a week until the visits ceased in March 2014. During the visits, Kesselmayer testified that the respondent would do the things that she suggested or follow Kesselmayer's modeling, but she did not effectively implement those suggestions in a less-structured setting. The respondent did not always know what was developmentally appropriate when dealing with the minors. Kesselmayer testified that during the visits, the respondent needed guidance, but would try to follow Kesselmayer's instructions and examples in parenting the minors. However, Kesselmayer testified that, in her opinion, the mother did not make progress in her ability to independently parent the minors. Kesselmayer did not think that the respondent's developmental level was at a level where she could parent in such a manner to keep the minors safe.

¶ 10 Danielle Bess, a caseworker at Children's Home, testified that she was the minors' caseworker from when they were first brought into care in December 2012 until she left Children's Home in September 2014. Bess testified regarding the respondent's progress on the services in her client service plan. The respondent successfully completed a parenting class in June 2013. She completed a psychological evaluation and a psychiatric evaluation, and she

engaged in counseling, although not always consistently. The respondent briefly worked at McDonald's, but she maintained a legal source of income in that she received SSI benefits. Bess believed that the respondent received those benefits dating back to her childhood for developmental delays or learning disabilities.

¶ 11 Bess testified that the respondent lived in six different homes during the time she was the caseworker. The last two homes seemed more stable, but Bess was never able to evaluate the last home that the respondent lived in. As for the drug testing, the respondent only completed two, and they were negative. Bess observed the respondent's supervised visits with the minors once a month. Bess found that the respondent was able to appropriately supervise the minors within the confines of the visiting room, with redirection. Bess testified that the respondent's parenting improved during the times that Kesselmayer was providing parenting coaching during the visits. In her permanency review report dated September 19, 2013, Bess noted that the respondent was cooperative and engaged in her services. However, Bess expressed concern regarding the respondent's ability to properly parent the three young minors. During the time period of April 2, 2013, to January 2, 2014, Bess testified that the respondent was making progress toward her required services, but the visits remained supervised for safety reasons and the minors were never returned home to the respondent.

¶ 12 Bess testified that her supervisor made the decision to suspend the respondent's visits with the minors in March 2014. In order to have the visits resumed, the respondent was to maintain her psychiatric medication, reengage in counseling, and make progress in counseling with regard to her previous abuse.

¶ 13 One of the case aides, Katrina Dickerson, testified that she supervised visits between the respondent and the minors from February 2013 until March 2014. Dickerson testified that the

last visit, on March 17, 2014, was an average weekly visit, although the oldest minor had stopped attending visits by that time. The respondent would greet the minors and help Dickerson get them out of the car and to the visiting room, but she would not really interact with the minors in the room. Dickerson would remind the respondent to change diapers and coach her regarding the bottle-feeding of the infant minor. Dickerson testified that when the respondent had all three children, she could not focus on all three. Dickerson never felt that the visits could be unsupervised because the respondent needed direction and additional support during the visits the entire time that Dickerson was supervising the visits.

¶ 14 The respondent testified that she was 22 years old and the mother of the three minors. She testified that the paramour that abused her oldest child would lock her out of the bathroom during the abuse. She testified that the paramour threatened her, but she should have called her mother for help. The respondent testified that she had been receiving SSI benefits for a learning disability since she was a baby. The doctor did not think that she would be able to finish high school, but the respondent testified that she graduated. The respondent also testified that she was taking her psychotropic medication and she had been discharged from counseling. The counseling was addressing the sexual abuse perpetrated by her father, who was also the father of the oldest minor.

¶ 15 The trial court found by clear and convincing evidence that the respondent was an unfit parent pursuant to all three grounds alleged in the petitions. The trial court found that Dr. Breitmeyer's assessment that the respondent was unable to independently parent her children due to her extremely low cognitive functioning was corroborated by the evidence regarding her visits with her children. The trial court also found that the respondent had made reasonable efforts toward the return of the minors, to the best of her ability, but she failed to make reasonable

progress towards their return. After a best interest hearing, the trial court found that it was in the best interest of the minors to terminate the respondent's parental rights. The respondent appealed, challenging only the finding of unfitness.

¶ 16 **ANALYSIS**

¶ 17 The respondent argues that the trial court's finding that she was unfit was against the manifest weight of the evidence. Under the Adoption Act (the Act), an "unfit person" is defined as "any person whom the court shall find to be unfit to have a child." 750 ILCS 50/1(D) (West 2012). The Act enumerates several grounds for unfitness, including *inter alia*, the failure "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 under Section 2-3 of the Juvenile Court Act of 1987" (750 ILCS 50/1(D)(m)(ii) (West 2012) and the "[i]nability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability…or developmental disability…and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period" (750 ILCS 50/1(D)(m)(p) (West 2012)). The State must prove the allegation of unfitness by clear and convincing evidence. *In re Adoption of Syck*, 138 Ill. 2d 255, 273 (1990). We will not reverse a trial court's fitness determination unless it was against the manifest weight of the evidence. *Id.* As the grounds for finding unfitness are independent, we may affirm the judgment if the evidence supports the trial court's finding of unfitness on any one of the statutory grounds alleged. *In re C.W.*, 199 Ill. 2d 198, 210 (2002).

¶ 18 In order to prove a parent unfit under section 1(D)(p) of the Act, the State must present competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist

that shows that the parent suffers from a mental disability that prevents her from discharging parental responsibilities, and there must be sufficient justification to conclude that the inability will extend beyond a reasonable period of time. *In re Cornica J.*, 351 Ill. App. 3d 557, 566 (2004) (citing *In re M.M.*, 303 Ill.App.3d 559, 566 (1999)). The respondent contends that the evidence presented by Breitmeyer did not satisfy the first prong of this test in that the proof of the respondent's extremely low I.Q. and diagnosis of mild mental retardation did not prove that the respondent was prevented from discharging normal parental responsibilities. The respondent contends that this case is virtually indistinguishable from *In re Cornica J.* In that case, the appellate court concluded that the State failed to prove by clear and convincing evidence that the parents had mental inabilities sufficient to prevent them from discharging normal parental duties. *Cornica J.*, 351 Ill. App. 3d at 566-67. In *Cornica*, the State's case rested almost entirely on the testimony of one clinical psychologist who opined that the parents, who had I.Q.s of 69 and 74, were unable to successfully and safely care for their children. *Id.* at 561-65. The reviewing court found that because the psychologist only met with the parents on three occasions, and some of her findings were contradicted by witness testimony, it did not constitute clear and convincing evidence of the parents' unfitness. *Id.* That is not the case here. Breitmeyer's testimony was that, due to the respondent's mild mental retardation, she was capable of independently parenting her children and would not be in any reasonable period of time. His opinion was based upon objective test results. See *Cornica J.*, 351 Ill. App. 3d at 574-75 (Kapala, J., dissenting). And, the other testimony in this case supports Breitmeyer's opinion. Although the respondent had successfully completed a parenting class, the evidence established that she could not apply the concepts that she had learned. The testimony was consistent that the

respondent could only parent the minors within the confines of the visiting room with direction and modeling. When the caseworkers removed those directions, the respondent regressed.

¶ 19 Thus, we find that the State proved by clear and convincing evidence that the respondent was unable to discharge her parental responsibilities and that inability would extend beyond a reasonable time period. Since we have found that the trial court's conclusion that the State proved that ground for unfitness by clear and convincing evidence, we need not address the other grounds. See *In re C.L.T.*, 302 Ill. App. 3d 770, 772 (1999) (a finding of parental unfitness may be upheld if there is evidence sufficient to support any one statutory ground, even if the evidence is not sufficient to support other grounds alleged). Also, the respondent did not challenge the best interest findings, so we will not address those findings. We affirm the judgments terminating the respondent's parental rights as to M.E., M.E., and M.E.

¶ 20 CONCLUSION

¶ 21 The judgments of the circuit court of Knox County are affirmed.

¶ 22 Affirmed.