2015 IL App (4th) 140926-U

NO. 4-14-0926

FILED
February 11, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: C.B., a Minor	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Edgar County
v.	)	No. 12JA10
WILLIAM DEAN KILGORE,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew L. Sullivan,
	)	Judge Presiding.

PRESIDING JUSTICE POPE delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's order terminating respondent's parental rights is affirmed as it is not against the manifest weight of the evidence.

¶ 2 In October 2013, the State filed a motion to terminate respondent's parental rights to his daughter, C.B., born October 24, 2011. Following an evidentiary hearing in July 2014 and a best-interest hearing in September 2014, the trial court terminated respondent's parental rights. Respondent appeals, contending the court erred when it found him unfit and when it found it to be in C.B.'s best interest to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On July 3, 2012, when C.B. was nine months old, the State filed a petition alleging C.B. was neglected because her environment was injurious to her welfare as a result of

domestic violence and drug abuse by both parents. In August 2012, respondent and C.B.'s mother, who is not a party to this appeal, admitted C.B. was neglected. The factual basis for respondent's admission was as follows: respondent had consumed alcohol and cocaine on the evening of January 21, 2012. Following an argument with C.B.'s mother, he tied her up, threatened to kill her and C.B., and stated, "We are all going to die in this house." After several hours of continued physical abuse, during which C.B. was present in the home, respondent drove to Walmart to get a prescription. C.B.'s mother got out of the car, found some teenagers and used a phone to call 9-1-1. Respondent was arrested. In violation of a bond condition restricting his contact with C.B. and C.B.'s mother, C.B.'s mother left her in respondent's care.

¶ 5 At the October 2, 2012, dispositional hearing, respondent did not appear, apparently because he was incarcerated. His lawyer was present. C.B.'s mother agreed guardianship and custody should be placed with the Department of Children and Family Services (DCFS). The trial court thereafter entered a dispositional order making C.B. a ward of the court, giving custody and guardianship to DCFS.

¶ 6 On October 29, 2013, the State filed its motion to terminate parental rights. The motion alleged respondent was unfit because he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)), (2) protect the minor from conditions within her environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2012)), (3) make reasonable efforts to correct the conditions that were the basis for the removal of the child from him within nine months after adjudication of neglected minor (750 ILCS 50/1(D)(m)(i) (West 2012)), and (4) make reasonable progress toward the return of the child to him within nine months after an adjudication of neglected minor

(750 ILCS 50/1(D)(m)(ii) (West 2012)). C.B.'s mother surrendered her parental rights on July 21, 2014.

¶ 7 The next day, the trial court held respondent's fitness hearing. Respondent testified he was currently incarcerated in the Department of Corrections (DOC) as a result of the aggravated battery of C.B's mother, with a projected parole date of September 3, 2015. According to respondent, with good-conduct credit, he could be released as early as March 2015. Respondent admitted having three positive drug tests for cocaine during the relevant nine-month period, August 28, 2012, to May 28, 2013. However, he blamed his wife, C.B.'s mother, for his positive results, claiming she must have put the drugs in his tea without his knowledge.

¶ 8 Debbie Smith testified she is a child-welfare specialist with DCFS. C.B. was about nine months old when she was placed in foster care in July 2012. Smith stated respondent's service plan required him to engage in and successfully complete domestic-violence/anger-management treatment, substance-abuse treatment, parenting education, and to maintain housing and employment. Respondent was also to engage in mental-health treatment.

¶ 9 Although respondent attended the required anger-management sessions, Smith could not say he successfully completed the program. Respondent continued to use intimidation during his sessions, resisted treatment, and continued to deny the allegations of domestic violence throughout the program.

¶ 10 With respect to his substance-abuse counseling, respondent was discharged unsuccessfully in April 2013. He intimidated people at that program and continued to deny drug usage. The program he was attending declined to continue to serve him.

¶ 11 Parenting education was to take place through Addus. The Addus worker was not

comfortable going to respondent's home, so she worked on parenting skills during visitation. While respondent would participate, he was always argumentative when the Addus worker tried to direct his behavior.

¶ 12 As a result of the above, Smith testified respondent had not successfully completed any of his service-plan goals. In addition, between August 28, 2012, and May 28, 2013, DCFS drug-tested respondent three or four times and twice he tested positive for cocaine. Respondent was rated unsuccessful at every six-month review.

¶ 13 Bob Jones, a Vermilion County probation officer, testified respondent's probation for the offense of felony telephone harassment was transferred from Champaign County to Vermilion County in August 2012. Respondent's original probation officer was a woman and after one month, she requested respondent's case be transferred to a male probation officer. Respondent moved to Jones' caseload in September 2012. Between August 2012 and May 2013, respondent tried to control the meetings with Jones. In March 2013, respondent was excessively belligerent during a home visit, yelling at Jones, telling Jones he would be sorry for talking to him about his drug-test results in front of his family. On another occasion, when respondent became belligerent, Jones shut the interview down, telling respondent to come back later in the month. Jones stated respondent never acknowledged having a drug problem.

¶ 14 Lori Britt was respondent's substance-abuse counselor at Prairie Center in Danville between August 2012 and May 2013. Defendant tested positive for cocaine on several occasions, but he would question the accuracy of the test results. Respondent acted inappropriately in the group setting, using racial slurs and intimidating others in the group. Britt and other staff at Prairie Center told their supervisor they did not want to work with respondent.

Their supervisor, Lisa Smith, intervened and took over respondent's treatment. On one of the three times respondent tested positive for cocaine, he told Britt a probation officer might have put cocaine in his specimen. Respondent was discharged unsuccessfully from Prairie Center.

¶ 15 Respondent, who was currently in DOC, testified he was not unsuccessfully discharged from substance-abuse counseling, but he admitted being unsuccessfully discharged from parenting classes when he argued with Prairie Center about whether he was required to take the classes.

¶ 16 The trial court found respondent unfit on three of the four grounds alleged after the State admitted it did not present evidence respondent failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare.

¶ 17 At the dispositional hearing on September 23, 2014, respondent appeared and was still in custody. Debbie Smith, C.B.'s caseworker, testified C.B. had been in foster care since July 2012. In June 2013, she was placed with her maternal aunt and uncle in Wisconsin and was still living there. C.B. was nine months old when she entered foster care, and according to Smith, C.B. did not know respondent and had no significant relationship with him. Smith testified respondent's parole date was September 2015 and he was not in a position to have C.B. returned to his care in the foreseeable future. C.B. had bonded with her foster family, including her eight-year-old female cousin. C.B. referred to her foster parents as "mom" and "dad" and her cousin as her "sister." C.B. was attending church and preschool and had contact with her extended family, including grandparents, aunts, uncles, and cousins. The foster parents planned to adopt C.B.

¶ 18 C.B.'s foster mother also testified to the close, loving relationship she and her

family had with C.B. She stated it would be very disruptive if C.B. were removed from her care.

¶ 19 Respondent testified he made every visit except the last one before he was incarcerated. Respondent had requested visits while he was incarcerated, but Smith felt it was inappropriate to transport a two-year-old to DOC for visits. Respondent sent letters and cards for C.B. to C.B.'s mother. Respondent also testified C.B. knows who he is and calls him "daddy." He testified he had a close relationship with C.B., loved her, and felt termination of his parental rights would not be in C.B.'s best interest.

¶ 20 The trial court found respondent was resistant to services and service providers, he continued to use illegal substances while on probation, and he did not make progress in his substance-abuse services. The court found by clear and convincing evidence it was in C.B.'s best interest to terminate respondent's parental rights.

¶ 21 This appeal followed.

¶ 22 II. ANALYSIS

¶ 23 On appeal, respondent argues the State failed to prove him unfit by clear and convincing evidence and the trial court's order terminating his parental rights was not in the best interest of the minor.

¶ 24 A. Fitness Determination

¶ 25 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite

conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 26 In this case, respondent was found unfit on three grounds listed in section 1(D): he failed to (1) protect the minor from conditions within her environment injurious to the minor's welfare (750 ILCS 50/1(D)(g) (West 2012)), (2) make reasonable efforts to correct the conditions that were the basis for the minor's removal (750 ILCS 50/1(D)(m)(i) (West 2012)), and (3) make reasonable progress toward the return of the minor within nine months of the neglect adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 27 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondent's argument the trial court's finding he failed to make reasonable progress toward the return of the minor was against the manifest weight of the evidence.

¶ 28 A trial court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 29 Here, the evidence at the fitness hearing showed respondent failed to complete

any of his directives in his service plan. He resisted treatment for domestic violence and substance abuse, and he failed to complete his parenting classes. He blamed others for his positive drug-test results. He intimidated service providers, who then declined to work with him. He also remains incarcerated in DOC, serving a four-year prison sentence for the aggravated battery of C.B.'s mother. The evidence clearly and convincingly showed respondent had not made reasonable progress toward the return of C.B. during the nine-month period following the neglect adjudication.

¶ 30 B. Best-Interest Determination

¶ 31 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interests. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227. Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228.

¶ 32 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2012). These include the following:

> "(1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's familial, cultural[,] and religious background and ties; (4) the child's sense of attachments, including love, security, familiarity, continuity of affection, and the least[-]

> disruptive placement alternative; (5) the child's wishes and long-term goals; (6) the child's community ties; (7) the child's need for permanence, including the need for stability and continuity of relationships with parent figures and siblings; (8) the uniqueness of every family and child; (9) the risks related to substitute care; and (10) the preferences of the person available to care for the child." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141; 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 33 The trial court's finding termination of parental rights is in a child's best interest will not be reversed unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 34 Here, C.B. has been in foster care since July 2012. Since June 2013, she has lived with her maternal aunt, uncle, and eight-year-old cousin. She has bonded with her foster family, considers her aunt and uncle to be her mother and father, and is loved and secure in her placement. She attends school and church and all of her needs are being met. Her foster parents intend to adopt her and thus she will have permanence. The trial court's finding it is in C.B.'s best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 35 III. CONCLUSION

¶ 36 For the reasons stated, we affirm the judgment terminating respondent's parental

rights.

¶ 37 Affirmed.