2015 IL App (4th) 140935-U

NO. 4-14-0935

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 17, 2015
Carla Bender
4th District Appellate
Court, IL

In re: C.M., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 12JA69
CHARLES MORGAN,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Pope and Justice Knecht concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The State presented sufficient evidence to support the trial court's order finding respondent was an unfit parent when he failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare by not participating in recommended services or visitation.

¶ 2 (2) The State presented sufficient evidence to support the trial court's order finding termination of respondent's parental rights was in the minor's best interest.

¶ 3 In April 2014, the State filed a petition to terminate the parental rights of respondent, Charles Morgan, as to his daughter, C.M. (born April 20, 2007). Following an August 2014 fitness hearing, the trial court found respondent unfit as a parent within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). Following an October 2014 best-interest hearing, the court terminated respondent's parental rights.

¶ 4 Respondent appeals, arguing the trial court's unfitness and best-interest determinations were against the manifest weight of the evidence. We disagree and affirm.

¶ 5 I. BACKGROUND

¶ 6 The following facts were gleaned from the State's pleadings, the reports and service plans on file, and evidence admitted at the various hearings in this case.

¶ 7 A. The State's Wardship Petition

¶ 8 In November 2012, two months after the minor's half-sibling (J.P.) was born, the State filed a two-count petition alleging C.M. was neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)). In the petition, the State alleged C.M. was neglected in that her environment was injurious to her welfare due to (1) abuse to J.P. (count I), and (2) injuries suffered by J.P. (count II). C.M.'s mother is also the mother of J.P. and another half-sibling, E.P. Respondent is the father of C.M. only. The State filed neglect proceedings involving all three minors, but neither the half-siblings nor their parents are parties to this appeal.

¶ 9 The allegations in the petition stem from an incident in which J.P. suffered a fractured skull. Neither the mother nor the father (C.M.'s stepfather) could provide a consistent or plausible explanation for how the injury occurred. Presumably, respondent had nothing to do with the injury since he resides in Terre Haute, Indiana, with his paramour and their two children.

¶ 10 Despite the fact the case involved all three minors, from this point forward, we refer only to the minor C.M., as she is the only minor subject to this appeal. At a January 2013 adjudicatory hearing, the trial court adjudicated the minor neglected. In March 2013, following a dispositional hearing, the court made the minor a ward of the court and appointed the Illinois Department of Children and Family Services (DCFS) as guardian. The sole grounds for these orders were the injuries sustained by J.P.

¶ 11 C.M. was placed in several different relative placements and a traditional foster home before being placed with her half-siblings in their paternal grandmother's home in Wellington, Illinois, in June 2013. The caseworker had attempted to contact respondent in the early stages of the case, noting in an April 2013 permanency report that her "last attempt" was on April 22, 2013. According to the case plan, respondent was to complete the integrated assessment in order to identify appropriate recommended services.

¶ 12 As of December 2013, respondent had completed and returned the integrated assessment and the in-home safety checklist, but he had not engaged in any services. He visited with C.M. twice, on June 3, 2013, and June 10, 2013, but cancelled two more visits scheduled after June 2013. According to the caseworker, in March 2014, respondent began "diligently seeking services" at Hamilton Center in Indiana. He sought enrollment in a parenting course. However, in April 2014, the caseworker advised respondent the goal was being changed to substitute care pending determination of parental rights termination and the agency would no longer pay for services.

¶ 13 B. The State's Petition To Terminate Parental Rights

¶ 14 In April 2014, the State filed a petition to terminate respondent's parental rights, alleging he was unfit within the meaning of section 1(D) of the Adoption Act in that he (1) abandoned the minor (750 ILCS 50/1(D)(a) (West 2012)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility for the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (3) failed to make reasonable efforts to correct the conditions that brought the minor into care (750 ILCS 50/1(D)(m)(i) (West 2012)); and (4) failed to make reasonable progress toward the return of minor within nine months (between January 25, 2013, and September 25, 2013) after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 15 1. *The August 2014 Fitness Hearing*

¶ 16 In August 2014, the trial court held a fitness hearing on the State's petition to terminate respondent's parental rights, at which the following evidence was presented.

¶ 17 Gwendolyn Parker, the family caseworker since May 2013, testified she received the integrated assessment from respondent and performed a safety checklist of his home in Indiana. She described respondent as cooperative. From the integrated assessment, only a parenting course was suggested. Parker said she would suggest counseling as well. She did not refer respondent to a parenting course until April 2014 because she wanted to first schedule visits between C.M. and respondent, and she was working with the Indiana provider to arrange for her agency to pay for services. As to visits, Parker said respondent advised he would need to take care of his outstanding Vermilion County warrants before he could attend a visit in Danville. Respondent kept in sporadic contact with Parker by telephone between June 2013 and December 2013, asking about C.M. and advising he was in the process of clearing up the warrants. Parker asked respondent to verify employment, but she did not receive any such verification. Finally, in March 2014, Parker found an agency that "was willing to take the over-the-state—the checks." At that time, Parker requested respondent participate in a parenting course and individual counseling.

¶ 18 Parker testified that, as of April 2014, she was unable to recommend respondent as a caregiver for C.M. because C.M. was "more standoffish" and expressed to Parker that she did not know respondent and "didn't want to be around him." Parker said she never asked respondent the bases for the underlying warrants. She said her primary concern about placing C.M. with respondent was C.M.'s feelings about him. C.M. was addressing her stated fear of

respondent during her counseling sessions. Respondent had a visit with C.M. in June 2014. Respondent did not testify at the hearing.

¶ 19 Following the presentation of arguments, the trial court found respondent unfit for only one of the reasons alleged in the State's petition to terminate parental rights. The court found respondent unfit due to his failure to maintain a reasonable degree of interest, concern, or responsibility for C.M.'s welfare. See 750 ILCS 50/1(D)(b) (West 2012).

¶ *20* 2. *The October 2014 Best-Interest Hearing*

¶ 21 At an October 2014 best-interest hearing, Parker again testified that C.M., and her two half-siblings were placed with the half-siblings' paternal grandmother. The children had been with her since June 2013. An uncle also lived with them. The children were close to both the grandmother and the uncle, in that they all had developed a close bond to one another. The grandmother expressed her desire to adopt all three children. C.M. was in first grade, and she was a cheerleader for the Little League football team. She participated in individual therapy. Parker described C.M. as having "a little more extensive needs." C.M. was unable to retain information on a short-term basis. Her counselor recommended she undergo a psychological evaluation. In Parker's opinion, the foster mother/grandmother is "equipped to handle those issues."

¶ 22 Following arguments, the trial court found it was in C.M.'s best interest to terminate respondent's parental rights.

¶ 23 This appeal followed.

¶ 24 II. ANALYSIS

¶ 25 A. The Issue of Whether Respondent Was an "Unfit Person"

¶ 26 The trial court found respondent met the statutory definition of an "unfit person" due to his failure to maintain a reasonable degree of interest, concern, or responsibility as to C.M.'s welfare. 750 ILCS 50/1(D)(b) (West 2012). In this appeal, we will ask whether the court's finding was against the manifest weight of the evidence. *In re Tiffany M.*, 353 Ill. App. 3d 883, 890 (2004).

¶ 27 The Juvenile Court Act provides a bifurcated mechanism whereby parental rights may be terminated. 705 ILCS 405/2-29(2) (West 2012). Under this procedure, there must first be a showing of parental unfitness based upon clear and convincing evidence, and a subsequent showing that the best interests of the child are served by severing parental rights. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). "A trial court's determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make." *M.J.*, 314 Ill. App. 3d at 655. We will not disturb a finding of unfitness unless the record clearly demonstrates the opposite result was proper. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 28 To find a parent unfit under section 1(D)(b) of the Adoption Act and avoid the necessity of obtaining the parent's consent for adoption, the trial court must find clear and convincing evidence that the parent failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2012). Because "this language is in the disjunctive, any of these three elements may be considered on its own as a basis for unfitness." *In re Jaron Z.*, 348 Ill. App. 3d 239, 259 (2004). We acknowledge that, in examining allegations under subsection (b), a trial court must focus on a parent's reasonable efforts rather than his success, and must consider any circumstances that may have made it difficult for him to visit, communicate with, or otherwise show interest in his child. *Jaron Z.*, 348 Ill. App. 3d at 259. However, noncompliance with an imposed service plan may be

sufficient to warrant a finding of unfitness under subsection (b). *Jaron Z.*, 348 Ill. App. 3d at 259.

¶ 29 The evidence presented at the fitness hearing demonstrated respondent failed to participate in any services. Bureaucracy may be partially at fault for this failure, as it apparently was exceptionally difficult for the caseworker to arrange a parenting course and counseling in Indiana that would allow payments to be made by an agency in Illinois. However, more importantly, respondent was wholly responsible for not visiting C.M. more than three times between November 2012 and October 2014. He sporadically kept in contact with the caseworker, explaining he had to clear up underlying warrants before he could appear in Danville.

¶ 30 As the trial court noted at the fitness hearing, respondent's "series of unfortunate events," referring to his outstanding warrants, prevented respondent from visiting C.M. However, the court also noted, "the children's lives don't stop just because a parent runs into problems in a case." It was respondent, through his own actions and through no fault of C.M., who ultimately caused the issuance of warrants. From the record, it appears respondent took at least 12 months to satisfy the warrants, at the expense of visiting his child. C.M. should not have to wait for respondent to demonstrate his parental responsibility. See *In re D.J.*, 262 Ill. App. 3d 584, 591 (1994) (the trial court is not obligated to wait forever for a parent as it is the parent's responsibility to make correct choices and "the law does not afford them an unlimited period of time to do so"). Nevertheless, in the meantime, respondent could have sent letters or cards to C.M., which he did not do.

¶ 31 This evidence clearly supports the trial court's finding that respondent was unfit based on his failure to maintain a reasonable degree of interest, concern, or responsibility for the

minor. Therefore, we find the court's finding that respondent was unfit pursuant to subsection (b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)) was not against the manifest weight of the evidence.

¶ 32 B. Trial Court's Best-Interest Determination

¶ 33 1. *Standard of Review*

¶ 34 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959 (2005).

¶ 35 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Jay. H.*, 395 Ill. App. 3d at 1071.

¶ *36* 2. *Best-Interest Analysis*

¶ 37 In support of his argument that the trial court erred by terminating his parental rights, respondent contends he "maintained an appropriate home for C.M. and attended visits with her and asked about her." The appropriateness of respondent's home was not addressed during the hearing, as it was not a contested issue. Instead, DCFS's concern about C.M. living with respondent had nothing to do with the state of respondent's home, but everything to do with respondent and C.M.'s nonexistent relationship. Three visits in 23 months (two in June 2013 and one in June 2014), between November 2012 and October 2014, does not establish a sufficient

parent-child bond that would override the stable, healthy, and loving environment C.M. has experienced in her foster home. She lives with her half-siblings and has bonded with her foster mother, who expressed her desire to provide permanency to C.M. in the form of adoption.

¶ 38 The Juvenile Court Act allows the State to move for termination of parental rights any time after the entry of the dispositional order. 705 ILCS 405/2-13(4) (West 2012). "A stated purpose of the Juvenile Court Act is to secure permanency for minors who have been removed from the custody of their parents 'at the earliest opportunity.' " (Emphasis added.) *In re D.F.*, 208 Ill. 2d 223, 231 (2003) (quoting 705 ILCS 405/1-2(1) (West 2000)). The supreme court has noted it is not in a child's best interest "for his status to remain in limbo for an extended period of time." *In re D.L.*, 191 Ill. 2d 1, 13 (2000). Affording respondent more time to prove his ability to parent C.M. is directly at odds with her interest in achieving permanency.

¶ 39 The evidence in this case overwhelmingly favored termination of respondent's parental rights. Based on respondent's lack of contact with C.M., the fact he has not participated in parenting classes or counseling, and C.M.'s feelings toward respondent, coupled with the beneficial environment in which C.M. lives, leaves little doubt as to what decision would best serve C.M.'s interests. We conclude the trial court's judgment terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's judgment.

¶ 42 Affirmed.