2015 IL App (4th) 140975-U

NO. 4-14-0975

FILED
March 20, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 10JA113
LAQUEETTA DAY,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew Maurer,
	)	Judge Presiding.

JUSTICE HARRIS delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's unfitness finding was not against the manifest weight of the evidence and the court committed no error in terminating respondent's parental rights.

¶ 2 Respondent, Laqueetta Day, appeals the termination of her parental rights to L.B. (born June 13, 2010). She argues the trial court's unfitness determination was against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record shows respondent is the parent of three children, L.B. and his two half-sisters, T.T. (born May 5, 2004) and M.T. (born January 13, 2002). In September 2010, all three children were removed from respondent's care after the Illinois Department of Children and Family Services (DCFS) received a hotline call indicating respondent and L.B.'s father had been

involved in domestic disputes and respondent was involved in a physical altercation in her neighborhood. Although the underlying proceedings concerned all three children, separate cases were filed with respect to each child, and only L.B.'s case is the subject of this appeal. Additionally, the parental rights of L.B.'s father were terminated during the underlying proceedings, but he is not a party on appeal.

¶ 5 On September 22, 2010, a petition was filed alleging L.B. was a neglected minor, in that his environment was injurious to his welfare due to domestic violence between his parents. On March 24, 2011, the trial court entered an adjudicatory order finding all three minors neglected based upon stipulations by respondent. On May 5, 2011, the court entered a dispositional order adjudicating the minors wards of the court and placing their custody and guardianship with DCFS.

¶ 6 On August 7, 2013, the State filed a motion to terminate respondent's parental rights to L.B. It alleged she was unfit for failing to (1) maintain a reasonable degree of interest, concern, or responsibility as to L.B.'s welfare; (2) make reasonable efforts to correct the conditions that were the basis for L.B.'s removal from her care; (3) make reasonable progress toward L.B.'s return to her care during the initial nine-month period immediately following the neglect adjudication, specifically March 24, 2011, to December 24, 2011; and (4) make reasonable progress toward L.B.'s return to her care during any nine-month period following the neglect adjudication, including December 24, 2011, to September 24, 2012, and September 24, 2012, to June 24, 2013. The State further alleged termination of respondent's parental rights was in L.B.'s best interests. The record indicates similar motions to terminate respondent's parental rights were filed as to T.T. and M.T.

¶ 7 On June 18 and 19, 2014, the trial court conducted consolidated hearings in connection with all three minors' cases to determine respondent's fitness. Lori McKenzie, a clinical psychologist whom the court recognized as an expert in the field, testified for the State. On December 24, 2012, McKenzie evaluated respondent to assess her cognitive, personal, and mental-health functioning. A written report she prepared regarding her evaluation of respondent was admitted into evidence.

¶ 8 McKenzie testified that, upon testing, respondent "scored in the range of mild intellectual disability," which she stated was formerly called mild mental retardation and indicated respondent's functioning level was such that she would probably need some kind of daily assistance. To specifically determine respondent's need for assistance, McKenzie tested respondent's adaptive functioning. Respondent scored in the borderline range on an adaptive-functioning test, meaning she could independently manage typical, day-to-day activities but would probably need assistance with "more complicated situations *** that require [a] different type of coping skills or more complex problem solving." McKenzie testified she also performed an academic-achievement test on which respondent obtained a reading grade equivalent to the fifth-grade level and a math grade equivalent at the fourth- to fifth-grade level.

¶ 9 McKenzie observed respondent's mental status and demeanor. She stated respondent appeared mildly to moderately depressed as a result of the situation she was in, but McKenzie observed no evidence of a mental illness related to any kind of psychotic behavior. She diagnosed respondent with adjustment disorder with depressed mood and borderline intellectual functioning. McKenzie made no other diagnosis but did find "antisocial traits," which she identified as a tendency by respondent to not take responsibility for her behavior.

¶ 10 McKenzie stated she also performed a psychological evaluation on T.T. She prepared a written report in conjunction with that evaluation, which was admitted into evidence. McKenzie determined T.T. functioned in the range of mild intellectual disability and met the criteria for oppositional defiant disorder; reactive attachment disorder, disinhibited type; and post-traumatic stress disorder. Her written report further indicated T.T.'s diagnoses included attention deficit/hyperactivity disorder (ADHD) and sexual abuse of a child. Although she did not perform a psychological evaluation on M.T., she was provided information that showed M.T. was having the same emotional issues and "kinds of oppositional types of behaviors" as T.T. In her written report of respondent's psychological evaluation, McKenzie noted M.T. was living in a residential treatment center and had "diagnoses of Bipolar Disorder NOS, Post-traumatic Stress Disorder, Reactive Attachment Disorder of Infancy or Early Childhood, and Rule/out of ADHD, combined type."

¶ 11 McKenzie opined respondent was unable to understand M.T.'s and T.T.'s mental-health issues and diagnoses. She believed it was unlikely that respondent would be able to independently parent M.T. and T.T. given those minors' mental-health issues and respondent's level of functioning and coping skills. From the information provided to her, McKenzie learned that, at that time, L.B. did not have the same issues as his siblings. With respect to respondent's ability to parent L.B., McKenzie stated as follows:

> "If [respondent] completed the rest of her service plan and had stable housing and reliable income and maintained free from substances, I felt that she might be able to parent [L.B.] as long as he does not develop the types of emotional and behavioral prob-

lems that his older sisters have."

¶ 12 McKenzie further noted the minors were removed from respondent's care when M.T. was eight years old, T.T. was six years old, and L.B. was three months old, respectively. Upon questioning by respondent's counsel as to whether respondent caused the diagnoses suffered by either M.T. or T.T., McKenzie testified as follows:

> "I cannot speak to [M.T.] specifically because I don't have her history, enough of it to be able to do that. But [T.T.], I do feel like she met the criteria for Reactive Attachment Disorder with *** her behavior, the way she interacted and the history. And Reactive Attachment Disorder is a result of not bonding with a primary caregiver as a young child. So, the Reactive Attachment Disorder would be directly related to interaction with the primary caregiver. In this case I believe that to be [respondent]."

¶ 13 Laura Weston testified she worked previously as a foster-care caseworker for Lutheran Child and Family Services (LCFS). Beginning in March 2012, Weston was the assigned caseworker for T.T. and L.B. She stated the minors were removed from their home due to a domestic-violence incident outside the home that involved members of the community. Weston testified, in September 2012, she "graded" a service plan that covered March 2012 to September 2012. In connection with the service plan, respondent was required to engage in substance-abuse treatment, counseling and mental-health services, parenting services, and domestic-violence services. Additionally, respondent had to maintain housing and employment and attend visitations with her children.

¶ 14 According to Weston, respondent received a satisfactory rating with respect to substance-abuse, counseling, and domestic-violence services. Weston noted respondent completed substance-abuse treatment in 2011 and her monthly drops were negative, she was attending counseling, and she had completed domestic-violence services in 2011 and there were no new instances of domestic violence. Conversely, respondent received an unsatisfactory rating in connection with housing, employment, and parenting. Weston testified, in March 2012, respondent lost both her housing and her job. She stated respondent received "Norman funds to maintain her home" until she lost her job. Respondent was then referred to the Family Unification Program through Fifth Street Renaissance, which could assist her with obtaining employment and housing. That program required respondent to expunge a felony conviction off her record, but the proper paperwork was never completed. Further, although respondent continued to receive assistance in obtaining employment through the Fifth Street Renaissance program, "at some point she quit cooperating or attending those appointments." Additionally, Weston stated respondent was rated unsatisfactory with respect to parenting because she was unable "to demonstrate the ability to care for the children during the visits and their special needs [and] their behaviors."

¶ 15 In September 2012, a new service plan was established for respondent, which covered the time period of September 2012 to March 2013. A psychological evaluation was added to respondent's service plan due to concerns about respondent's parenting. Respondent's services otherwise remained the same. In March 2013, respondent's cooperation with the plan was reviewed. Weston testified respondent was rated satisfactory in connection with substance-abuse and domestic-violence services. Respondent's housing was rated unsatisfactory because,

although she had located a place to live, it had not yet been evaluated. Respondent remained unemployed and was rated unsatisfactory in connection with that goal. Weston stated respondent also received an unsatisfactory rating with respect to counseling because she could not "demonstrate an understanding of what was being discussed with her as far as the needs of her kids and the ability to keep them safe." Parenting and visitation were similarly rated unsatisfactory.

¶ 16 Weston stated, in March 2013, a new service plan was created, covering March 2013 to September 2013. Respondent's tasks remained the same. Again, in September 2013, respondent was rated satisfactory with respect to substance-abuse and domestic-violence services. She also completed her psychological evaluation. Weston testified respondent had obtained housing but did not have sufficient space to accommodate the minors. Also, she was unemployed.

¶ 17 Weston testified respondent received unsatisfactory ratings in connection with parenting and visitation due to "the behavior of the kids during visits and [respondent's] inability to control or calm [them]." Counseling was also unsatisfactory because respondent "was unable to understand or discuss the needs of her kids when it came to medications, behavior, [or] diagnosis." Weston further stated respondent missed a few counseling sessions toward the end of the service plan's six-month period.

¶ 18 Weston noted that, in late November 2012, counseling involving T.T. and respondent ended because the counselor felt respondent's behavior was not helping T.T. According to Weston, T.T.'s counseling was specific to T.T.'s sexualized behaviors and respondent "did not want to engage in the activities or play the games T.T. wanted to play." Respondent left the counseling sessions and "left [T.T.] crying." Additionally, in approximately February 2013, re-

spondent's counseling sessions with M.T. ended because respondent failed to consistently attend.

¶ 19 Weston testified that, while she worked on the case, respondent consistently attended visitations. She also brought meals to visits and gifts for birthdays and holidays. Weston testified respondent kept in regular contact with her until approximately November 2013, when contact became "somewhat sporadic." Weston denied that there was ever a time while she was a caseworker in the matter that she was close to returning any of the three children to respondent. Further, she stated respondent's visitation with the children was never unsupervised. Weston stated it was difficult for respondent to ensure the children's safety due to their behaviors.

¶ 20 On cross-examination by respondent's counsel, Weston acknowledged that by March 2012, respondent had taken steps to control anger issues she had been dealing with when the minors were initially removed from her care. Specifically, she completed "Preventing Abusive Relationship" classes and there had been no more reports of any violent behavior. Weston clarified that the requirement in respondent's service plan that she obtain employment was so that respondent could financially support her family. She noted that throughout the case respondent received social security disability benefits on a monthly basis. However, Weston testified respondent did not have enough income "to maintain rent and utilities and a home for all of her children." Weston further acknowledged that from March 2012 until June 2013, respondent consistently attended her own counseling sessions. She also testified as follows:

> "I believe [respondent] showed interest in [the children] during visits. But outside of visits, the discussions about them, she wasn't interested in what people had to tell her about what was going on with them. Instead[,] it was that none of us knew or understood

> and she knew best and, you know, all her kids were behaving this way simply because they weren't with her. And so I don't know that she was interested in what we were actually saying these diagnoses were, she would deny that they were there. She would deny their behaviors."

¶ 21 With respect to the housing respondent obtained between September 2012 and June 2013, Weston noted it was only a two-bedroom home and not large enough to accommodate all of respondent's children. She stated the goal was to return all of the children home to respondent and, thus, respondent's home had to be assessed for all three children.

¶ 22 Additionally, Weston testified she was not aware that L.B. had been diagnosed with anything other than ADHD. She stated his behavior during visitations was controllable and, during visits she monitored, he typically played alone by himself and did not interact much with anyone else. Weston testified respondent's visitations were with all three children and she did not have one-on-one visits with L.B. unless her older children were unable to attend. On redirect, Weston noted that the goal had been to return all of the children home and interaction with just one child would not accurately depict what it would be like at home for respondent and all three children. She also stated respondent was unable to demonstrate that she understood what was discussed during her counseling sessions, including "how to keep her children safe, how to make sure that she can take them to their appointments and give them the appropriate medications, what their diagnoses means, [and] what their needs are at school."

¶ 23 Lisa Raciti testified she worked for LCFS as a case aide. From November 2012 to June 2014, she observed visitations between respondent and her children. She identified sev-

eral issues that gave her concern about visits that occurred between November 2012 and June 2013. Specifically, On November 29, 2012, respondent expressed an unwillingness to attend a pageant M.T. was participating in; on February 14, 2013, L.B. asked to use the restroom and respondent had to be reminded to take him; on March 7, 2013, L.B. cried and stated he did not want to go to the visitation; on May 23, 2013, L.B. was "very stand-offish" with respondent and "didn't want to have anything to do with her"; and on both June 6 and 20, 2013, respondent failed to acknowledge L.B. when he attempted to talk with her while the two were being transported to visits with the other minors. Raciti testified respondent also yelled at another driver when being transported for the June 20, 2013, visit.

¶ 24 Raciti further stated that L.B. usually went to her if he had an issue during visits and she had to redirect him to go to respondent. During visits, respondent's main focus was usually on M.T., while T.T. and L.B. would play together.

¶ 25 Robbie Donaldson testified she was a caseworker for LCFS. In 2012, she was employed as a case aide and assigned to supervise visits between respondent and her children. On March 21, 2012, Donaldson supervised a visit between respondent and her children at a McDonald's restaurant. She stated parents are asked to provide a meal during visitation but on that occasion respondent did not have the resources to pay for food and M.T. had to purchase respondent's food. Donaldson further testified that respondent had a difficult time gathering everyone and calming them down for the meal. Additionally, during a visit on May 29, 2012, she observed T.T. begin to act out after respondent indicated she was not interested in doing a puzzle with T.T. Respondent was unable to calm T.T. down. On June 20, 2012, T.T. became physically and verbally aggressive during a visit. Donaldson testified respondent did not attempt to calm

T.T. down and Donaldson had to intervene. On August 1, 2012, respondent did not seem interested in playing a game with M.T. Also, T.T. began to act out and respondent told her to "chill out." Donaldson testified she did not believe respondent could have maintained control of the children and their behavior during visits without someone else present.

¶ 26 Following the presentation of evidence, the State withdrew its allegation that respondent failed to make reasonable progress during the initial nine-month period following the neglect adjudication. The trial court then determined respondent was unfit with respect to all three minors on the basis that she failed to make reasonable (1) efforts to correct the conditions that were the basis for the minors' removal from her care (750 ILCS 50/1(D)(m)(i) (West 2012)) and (2) progress toward the minors' return from September 24, 2012, to June 24, 2013 (750 ILCS 50/1(D)(m)(iii) (West 2012)). The court noted that although respondent "did certain things right *** there were always things lacking" and there was never a time period where it appeared likely that the children would be returned home.

¶ 27 On October 8, 2014, the trial court conducted a best-interests hearing. Initially, the court granted a request by the State that the goal for M.T. and T.T. be changed to "cannot be provided for in a home environment" and that the best-interests hearing proceed only with respect to L.B. At the conclusion of the evidence, the court found termination was in L.B.'s best interests and terminated respondent's parental rights.

¶ 28 This appeal followed.

¶ 29 II. ANALYSIS

¶ 30 On appeal, respondent challenges only the trial court's finding that she was unfit. She maintains the court's fitness finding was against the manifest weight of the evidence.

¶ 31 A trial court may involuntarily terminate parental rights where (1) the State proves, by clear and convincing evidence, that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and (2) the court finds that termination is in the child's best interests. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). On review, we will not reverse the trial court's finding that a parent is unfit "unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011). Additionally, "we may affirm the trial court's decision on any basis established by the record." *In re K.B.*, 314 Ill. App. 3d 739, 751, 732 N.E.2d 1198, 1208 (2000).

¶ 32 Here, the State alleged, and the trial court found, respondent was unfit for failing to make reasonable (1) efforts to correct the conditions that were the basis for L.B.'s removal from respondent (750 ILCS 50/1(D)(m)(i) (West 2012)) or (2) progress toward L.B.'s return to respondent's care during a nine-month period following the neglect adjudication, specifically September 24, 2012, to June 24, 2013 (750 ILCS 50/1(D)(m)(iii) (West 2012)). For the reasons that follow, we find sufficient evidence was presented to show respondent failed to make reasonable progress toward L.B.'s return from September 24, 2012, to June 24, 2013.

¶ 33 "[I]n determining whether a parent has made reasonable progress toward the return of the child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968. With respect to section 1(D)(m), the supreme court has held as follows:

> "[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, 752 N.E.2d 1030, 1050 (2001).

Further, this court has also discussed the "reasonable progress" standard, stating as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

See *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 ("The supreme court's discussion in *C.N.* regarding the benchmark for measuring a respondent parent's progress did not alter or call into

question this court's holding in *L.L.S.*").

¶ 34 As stated, we find the State's evidence was sufficient to show respondent was unfit for failing to make reasonable progress toward L.B.'s return to her care from September 24, 2012, to June 24, 2013. The record shows L.B. was removed from respondent's care in September 2010, when he was approximately three months old. At the time of the fitness hearing, L.B. was four years old and had been a ward of the court nearly all his life. Testimony at the fitness hearing showed there had been no point during the underlying proceedings at which L.B. was close to being returned to respondent's care. Specifically, although respondent had engaged in and completed some services—including domestic-violence and substance-abuse services—concerns remained during the relevant nine-month time period regarding her compliance with services and her ability to parent.

¶ 35 On appeal, respondent argues that much of the State's evidence that she failed to make reasonable progress centered on her two older children, M.T. and T.T., who had significant mental-health issues that, ultimately, necessitated placement in residential facilities. Respondent contends, however, that because each child had his or own case, they should have been considered individually and her progress should have been evaluated for the possibility of returning only L.B. to her care. However, even considering respondent's progress toward the return of only L.B., the trial court's decision was not against the manifest weight of the evidence.

¶ 36 The record shows, from September 2012 to June 2013, respondent was rated unsatisfactory in connection with tasks on her service plan, including employment, counseling, parenting, and visitation. Respondent was unemployed despite the requirement in her service plan that she obtain employment. On appeal, she argues that there was no evidence that her disability

income was insufficient to support solely herself and L.B. We note, however, that the only evidence presented was that respondent's income was insufficient to support her family and the record fails to reflect all of respondent's financial obligations as to M.T. and T.T. have terminated.

¶ 37 Notably, respondent was also rated unsatisfactory with respect to counseling, parenting, and visitation services. In particular, although respondent attended her individual counseling sessions, she failed to demonstrate, during the relevant time frame, "an understanding of what was being discussed with her as far as the needs of her kids and ability to keep them safe." The record fails to reflect that testimony describing respondent's lack of understanding was confined solely to M.T. and T.T. Additionally, while L.B. did not suffer from the same significant mental-health issues as his siblings, he had been diagnosed with ADHD and, given respondent's intellectual disability and level of functioning, she had difficulty understanding and managing her children's mental-health issues and behaviors. Finally, testimony regarding visitations during the relevant time frame revealed concerns with respect to respondent's ability to parent L.B.

¶ 38 We note that the State also alleged respondent was unfit for failing to make reasonable progress toward L.B.'s return from December 24, 2011, to September 24, 2012. Although the trial court did not rely on this time frame to find respondent unfit, as stated, we may affirm its decision on any basis supported by the record. *K.B.*, 314 Ill. App. 3d at 751, 732 N.E.2d at 1208. Here, the record shows that that respondent was without housing and unemployed during that time period and failed to cooperate with programs designed to assist her with those issues. Additionally, Weston testified respondent received an unsatisfactory rating on parenting between December 2011, and September 2012, because she was unable "to demonstrate the ability to care for the children during the visits and their special needs [and] their behaviors."

Thus, we find the evidence presented also supports a finding that respondent failed to make reasonable progress toward L.B.'s return from December 24, 2011, to September 24, 2012.

¶ 39 Under the circumstances presented by this case, we cannot say an opposite conclusion from that of the trial court was clearly evident. Therefore, its finding that respondent was unfit was not against the manifest weight of the evidence and the court committed no error in terminating respondent's parental rights.

¶ 40 III. CONCLUSION

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

¶ 42 Affirmed.