2015 IL App (4th) 141051-U

NOS. 4-14-1051, 4-14-1052 cons.

FILED
April 10, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

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| In re: N.P., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Vermilion County |
| v. (No. 4-14-1051) | ) | No. 13JA54 |
| LINDA MELTON, | ) | |
| Respondent-Appellant. | ) | |
| ---------- | ) | |
| In re: N.A., a Minor, | ) | No. 13JA55 |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| Petitioner-Appellee, | ) | |
| v. (No. 4-14-1052) | ) | Honorable |
| LINDA MELTON, | ) | Claudia S. Anderson, |
| Respondent-Appellant. | ) | Judge Presiding. |

JUSTICE HOLDER WHITE delivered the judgment of the court.
Justices Turner and Steigmann concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In May 2014, the State filed petitions seeking a finding of unfitness and the termination of the parental rights of respondent, Linda Melton, as to her children, N.A. (born December 28, 2011) and N.P. (born March 9, 2013). In October 2014, the trial court entered an order finding respondent was unfit to discharge her parental duties. In November 2014, the court found it was in the minors' best interest to terminate respondent's parental rights.

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

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the Termination Proceedings

¶ 6 In April 2013, the State filed petitions for adjudication of wardship, alleging respondent's children, N.A. and N.P., were abused and neglected minors under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3 (West 2012)). Regarding N.A., the State alleged he was (1) neglected in that (a) his environment was injurious to his welfare as a result of respondent's drug use and (b) he was left without supervision for an unreasonable period of time without an adequate plan of care; and (2) abused in that respondent created a substantial risk of physical injury to him by other than accidental means. Regarding N.P., the State alleged she was (1) neglected in that her environment was injurious to her welfare as a result of respondent's drug use; and (2) abused in that respondent created a substantial risk of physical injury to her by other than accidental means.

¶ 7 The State filed its petitions in response to a report respondent threw N.P., who was then five weeks old, onto a mattress, where she then fell onto the floor. When police arrived at the residence, N.A.'s whereabouts were unknown, but he was later found at a neighbor's house. The police arrested respondent for throwing N.P. onto the mattress.

¶ 8 Later that month, the trial court ordered temporary custody of the minors be placed with the Department of Children and Family Services (DCFS), finding probable cause existed to believe both minors were abused and neglected.

¶ 9 In August 2013, the cause proceeded to an adjudicatory hearing, which respondent did not attend. Following this hearing, the trial court entered an amended adjudicatory order, finding each minor was neglected based on an injurious environment due to

respondent's drug use. As part of its order, the court required negative drug tests and participation in services as a prerequisite to respondent receiving visits.

¶ 10 In September 2013, the cause proceeded to a dispositional hearing. During this hearing, the DCFS caseworker assigned to the case, Cherylanda Trice, noted respondent's mental health was an issue, as she had displayed aggression, agitation, and frustration during her interactions with the DCFS caseworker. Following this hearing, the trial court entered a dispositional order, finding respondent was currently unfit and unable to discharge her parental duties as a result of her drug use and mental-health issues. Both children were adjudicated neglected and made wards of the court.

¶ 11 B. The Termination Proceedings

¶ 12 1. *The State's Petitions*

¶ 13 In May 2014, the State filed petitions seeking a finding of unfitness and the termination of respondent's parental rights as to both children. Therein, the State alleged respondent was unfit because she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare pursuant to section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2012)) (count I); (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors within the initial nine months (August 1, 2013, to May 1, 2014) following the adjudication of neglect pursuant to section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2012)) (count II); (3) failed to make reasonable progress toward the return of the minors to her custody within the initial nine months following adjudication pursuant to section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count III); and (4) had demonstrated an inability to discharge her parental responsibilities as supported by competent evidence from a psychologist of a mental

impairment, mental illness, mental retardation, or developmental disability pursuant to section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(p) (West 2012)) (count IV).

¶ 14 2. *The Fitness Hearing*

¶ 15 In October 2014, the cause proceeded to a fitness hearing, at which the following evidence was presented. Dr. Susan Minyard testified she was a clinical psychiatrist, and she performed a psychological evaluation on respondent pursuant to a referral from DCFS. As part of the evaluation, Dr. Minyard administered an intelligence test, conducted a personal interview of respondent, and reviewed various documents sent to her by respondent's DCFS caseworker, Linda Campbell. Respondent arrived at the 9 a.m. evaluation 20 minutes late and was adamant about leaving for work at 1:15 p.m. Typically, these evaluations lasted until mid-afternoon or early evening. As a result, Dr. Minyard was not able to conduct all the tests she normally would. According to Dr. Minyard, respondent was not willing to answer her questions. At times, her answers were inconsistent with other answers and, at other times, it was clear to Minyard respondent was not going to be truthful. Throughout the interview, respondent was emotionally unstable and she became "extremely agitated at times."

¶ 16 Dr. Minyard testified respondent had a poor understanding of why her case had been opened and believed she had not done anything wrong. As part of the evaluation, Dr. Minyard administered an intelligence test, on which respondent scored in the "borderline range," which is between mild mental retardation and below average intelligence. However, Dr. Minyard did not believe the test was a good estimate of respondent's true intelligence because of her emotional instability and uncooperativeness.

¶ 17 After completing her evaluation of respondent, Dr. Minyard was able to reach a "tentative diagnosis" of bipolar disorder not otherwise specified, "with a rule out for

schizoaffective disorder," "probable" post-traumatic stress disorder, cannabis dependence, and personality disorder not otherwise specified. Dr. Minyard opined these diagnoses would affect respondent's ability to parent the minors because her conditions "affect her ability to control herself and to control her emotional state with the children, [and] to control her behaviors." Dr. Minyard further opined respondent suffered from a mental impairment or illness, which would prevent her from performing her parental responsibilities within a reasonable time. According to Dr. Minyard, respondent's mental condition would prevent her from being able to learn and retain parenting skills. Finally, Dr. Minyard concluded counseling and medication would likely help respondent, but she had "a guarded prognosis as to whether [respondent] would cooperate" with these treatments.

¶ 18 Linda Campbell, the family's DCFS caseworker, testified respondent was required to complete the following services: (1) a substance-abuse assessment and any subsequent treatment, (2) counseling to address parenting and mental-health issues, (3) a mental-health assessment and any subsequently recommended treatment, and (4) homemaker services "to assist her in accessing any community services that would be beneficial to her." According to Campbell, her biggest concern was respondent's mental health "because her mental state was so unstable she really couldn't participate in the other services until she adequately addressed the mental health and got that under control."

¶ 19 In August 2013, respondent was referred to Crosspoint Human Services for a mental-health assessment. During this assessment, respondent became increasingly uncooperative, defensive, and argumentative, and she ultimately walked out of the assessment. The person who performed the assessment could not give a concrete diagnosis as a result of respondent's uncooperativeness. Respondent refused to complete the mental-health assessment

until March 2014. Dr. Minyard conducted the March 2014 assessment, which is discussed above.

¶ 20 As a result of Dr. Minyard's diagnoses, Campbell referred respondent to a therapist, Dorothy Penry. Respondent missed her first appointment with Penry. Campbell also referred respondent to a psychiatrist, Dr. Tiegland, but respondent missed the first appointment. Campbell testified, "When she went to [a makeup appointment], she presented to Dr. Tiegland that she only wanted medication to get her children back, that she was not interested in mental[-]health treatment or the therapeutic process." As a result of respondent's statements, Dr. Tiegland refused to prescribe any medications. According to Campbell, Dr. Tiegland informed respondent she would need to be consistent in therapy for a few months before he would revisit the idea of prescribing medication, but respondent failed to follow through with therapy.

¶ 21 On cross-examination, Campbell testified respondent went to Chicago to address her mental-health issues after Dr. Tiegland refused to prescribe her medication. The doctor in Chicago prescribed Zoloft to respondent. Campbell never made contact with the mental-health agency in Chicago through which respondent obtained her medication because respondent never provided her with the information. Campbell believed respondent took the medication for three or four weeks but was unable to get back to Chicago to get a refill. Respondent was therefore unable to maintain the treatment.

¶ 22 In June 2013, Campbell referred respondent to Leta Pepper, a therapist. Respondent was unsuccessfully discharged by Pepper. In October 2013, Campbell referred respondent to Carla Dumas, a therapist with the Center for Youth and Family Services, but respondent was unsuccessfully discharged. In February 2014, Campbell referred respondent to

Lori DeYoung. Respondent attended a few sessions with DeYoung but was ultimately discharged in May 2014 due to a lack of attendance.

¶ 23 Respondent was also referred for homemaker services, which were supposed to help respondent apply for social-security benefits, obtain an identification card, organize and adhere to her schedule, and "get some of the services going." The homemaker services were not successful, however, because respondent "was not home at the time that the homemaker arrived and after *** over a month['s] worth of attempts[,] the case was closed."

¶ 24 In regard to her substance abuse, respondent completed a substance-abuse assessment in August 2013 but failed to attend a subsequent orientation so she could start services. In November 2013, respondent was unsuccessfully discharged from these services. In January 2014, Campbell again referred respondent for a substance-abuse assessment, but respondent did not complete the assessment. In March 2014, Campbell referred respondent for a substance-abuse assessment for a third time. This time, respondent completed the assessment. Respondent thereafter attended services with P.J. Crone, a counselor with the Prairie Center, for three or four weeks. Respondent "was not able to participate in group treatment that is regularly provided because of her extreme agitation and unstable mental health," but Crone engaged in individual services with respondent. However, by June 2014, respondent's attendance became sporadic, and she was unsuccessfully discharged from substance-abuse services.

¶ 25 Campbell testified respondent last visited with N.A. and N.P. in October 2013. Respondent visited with the children in June and July of 2013, when the children were placed locally. Respondent attended two visits with the children at the DCFS field office in Bloomington after the children were moved to relative placement in Rockford. However, respondent was not happy with the travel required by this arrangement. Campbell reported

respondent's visitation ceased in October 2013, after DCFS received the court order requiring respondent to submit a clean drug screen and be engaged in services before any visitation occurred.

¶ 26 Campbell testified adjudication was completed in August 2013, but, by May 2014, respondent had not successfully completed any services. Respondent had never cooperated in addressing her mental-health issues. By May 2014, Campbell did not feel she could safely return N.A. and N.P. to the care of respondent because she had not addressed her issues or completed any services.

¶ 27 At the conclusion of the testimony, the trial court found respondent was unfit. The court found, while respondent had maintained a reasonable degree of interest and concern as to N.A.'s and N.P.'s welfare, she did not maintain a reasonable degree of responsibility (count I). Additionally, the court found respondent failed to make a reasonable effort to correct the conditions that were the basis for the minors being in care (count II). In making this finding, the court noted respondent "could never acknowledge the need for mental[-]health services, and to that extent I would find that she failed to make reasonable efforts even on a subjective assessment." Further, the court found respondent had failed to make reasonable progress toward the return of her children in the initial nine months following adjudication (count III). Finally, the court determined the State had proved count IV of the petition. In making this finding the court noted the following:

> "And I don't know how the reporter was able to report these proceedings because [respondent] was agitated, distressed, and anxious during the entire proceeding. [She] was up, out of the courtroom, stood up for most of the proceedings, finally did come

to the counsel table but remained standing. [She] has interrupted the proceedings on a regular basis. It's clear to the [c]ourt that there's an inability to control her behavior."

¶ 28 3. *The Best-Interest Hearing*

¶ 29 In November 2014, the cause proceeded to the best-interest hearing. Respondent did not attend. Kayla Evink testified she was the current caseworker for N.A. and N.P. The minors were currently placed with respondent's half-sister, Octavia Oliver, in Rockford, Illinois, and had been since July 2013. The minors appeared to be bonded to Oliver and her two children. Evink testified she had no concerns with the minors remaining in Oliver's care. In fact, Oliver had started the application process for becoming a licensed foster parent. Evink testified N.A. and N.P. were currently engaged in services. The minors were engaged in an early-intervention program and were receiving speech therapy. N.A. was set to start a Head Start program when he turned three years old. Additionally, Evink testified respondent had not visited with N.A. and N.P. in over a year and failed to send letters or gifts to the minors.

¶ 30 The trial court also reviewed a best-interest report prepared by DCFS. The report indicated Oliver had provided N.A. and N.P. with a nurturing home environment, stability, adequate food, medical care, and emotional support. Oliver was willing to maintain communication between the minors and respondent. The report further indicated the minors felt loved, nurtured, and accepted in Oliver's home, given they often latched onto Oliver when they were upset, not feeling well, or in uncomfortable or new surroundings. The report also indicated the removal of N.A. and N.P. from Oliver's home would be detrimental to their welfare, given the strong bonds they had formed and Oliver's ability to recognize and provide for their needs.

Additionally, the report noted Oliver had expressed a desire to adopt N.A. and N.P. and had even signed a permanency-commitment form.

¶ 31 At the conclusion of the hearing, the trial court found it was in the minors' best interest to terminate respondent's parental rights.

¶ 32 This appeal followed.

¶ 33 II. ANALYSIS

¶ 34 A. The Trial Court's Unfitness Findings Were Not Against the Manifest Weight of the Evidence

¶ 35 Respondent first contends the trial court's finding of unfitness was against the manifest weight of the evidence. The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* " 'A trial court's finding is against the manifest weight of the evidence if review of the record clearly demonstrates that the opposite result would be the proper one.' " *In re Stephen K.*, 373 Ill. App. 3d 7, 20, 867 N.E.2d 81, 94 (2007) (quoting *In re K.G.*, 288 Ill. App. 3d 728, 735, 682 N.E.2d 95, 99-100 (1997)). The trial court is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Jordan V.*, 347 Ill. App. 3d at 1067, 808 N.E.2d at 604. Where, as here, the State alleges multiple bases for a finding of unfitness, "a finding adverse to the parent on any *one* ground is sufficient to support a subsequent termination of parental rights." (Emphasis in original.) *In re C.W.*, 199 Ill. 2d 198, 217, 766 N.E.2d 1105, 1117 (2002). Accordingly, we begin with analyzing whether respondent demonstrated reasonable progress during the initial nine months following adjudication.

¶ 36 Pursuant to section 1(D)(m)(ii) of the Adoption Act, a parent is unfit if he or she fails "to make reasonable progress toward the return of the child[ren] to the parent within 9 months after an adjudication of [neglect or abuse] under Section 2-3 of the [Juvenile Act]." 750 ILCS 50/1(D)(m)(ii) (West 2012). Reasonable progress is an objective standard which focuses on the amount of progress toward the goal of reunification one can reasonably expect under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). " '[T]he standard by which progress is to be measured is parental compliance with the court's directives, the service plan, or both.' " *Id.* (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 463-64, 577 N.E.2d 1375, 1389 (1991)). Reasonable progress requires, at minimum, measurable or demonstrable movement toward the goal of the return of the child. *L.L.S.*, 218 Ill. App. 3d at 460-61, 577 N.E.2d at 1386-87. Reasonable progress is shown where the parent has made progress "of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody." (Emphasis in original.) *Id.* at 461, 577 N.E.2d at 1387.

¶ 37 In this case, the service plan filed by DCFS following the adjudication of neglect required respondent to complete (1) a substance-abuse assessment and any subsequently recommended treatment, (2) a mental-health assessment and to comply with any resultant recommendations, and (3) counseling to address parenting and mental-health issues. As of May 2014, respondent had completed the substance-abuse assessment and engaged in treatment at Prairie Center for three or four weeks but was unsuccessfully discharged after her attendance became sporadic. Further, respondent had completed the mental-health assessment, but she did not follow through with any of the resultant recommendations, as she was unsuccessfully discharged by four different therapists. In fact, respondent failed to acknowledge anything was wrong and recognize her significant mental-health issues, and her failure to take control of her

mental-health issues was further evidenced by her frequent interruptions and outbursts of emotion during the fitness hearing.

¶ 38 Respondent argues she "had mental[-]health issues which prevented her from advancing and benefitting from counseling and substance[-]abuse treatment." However, the record shows respondent failed to acknowledge she had mental-health issues, despite Dr. Minyard's diagnoses. Further, respondent failed to engage in mental-health services, which would have allowed her to be more receptive to and benefit from the other services offered to her.

¶ 39 Additionally, the trial court's dispositional order required respondent to complete a clean drug screen and cooperate with services before she would be allowed to visit N.A. and N.P. However, respondent had not seen her children since that order was put into place, as she was unable to complete a clean drug screen.

¶ 40 Here, not only did respondent fail to complete any services, she failed to show any measurable or demonstrable movement toward the goal of return of the minors to the point Campbell did not feel she could safely return N.A. or N.P. to her care in the near future. Accordingly, we conclude the trial court's finding that respondent failed to make reasonable progress toward the return of the minors was not against the manifest weight of the evidence.

¶ 41 B. The Trial Court's Best-Interest Findings Were Not Against the Manifest Weight of the Evidence

¶ 42 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261, 810 N.E.2d 108, 126 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be

overturned unless it is against the manifest weight of the evidence. *Id*. at 262, 810 N.E.2d at 126-27.

¶ 43 The best-interest stage is about the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments ***[;]
>
> * * *
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
>
> (h) the uniqueness of every family and child;
>
> (i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 44 In this case, N.A. and N.P. had been living with Oliver since July 2013, their longest placement since being taken into care and a majority of their lifetimes. Both N.A. and N.P. have exhibited a strong bond with Oliver and her children and are receiving early-intervention services and speech therapy. Further, the record shows removal from Oliver's care would be detrimental to the minors' welfare, as she is able to recognize and provide for the minors' physical, emotional, educational, and financial needs. Moreover, Oliver is in position to provide permanency for the minors and has signed a permanency-commitment form, evidencing her willingness to do so.

¶ 45 Conversely, the record shows respondent cannot, at this time or in the near future, provide N.A. and N.P. with permanency. Respondent has not seen N.A. and N.P. in over a year. This is a direct result of respondent's failure to complete a clean drug screen. While respondent did engage in a few sessions at Prairie Center to address her substance-abuse issues, respondent was unsuccessfully discharged from the program after her attendance became sporadic. Further, respondent failed to cooperate with a mental-health assessment until March 2014. When she finally completed the assessment, respondent failed to follow through with the recommended services and was unsuccessfully discharged from four therapists due to attendance issues. Given respondent's demonstrated lack of effort and progress toward the goals set for her, it is very unlikely respondent will be restored to fitness and able to provide permanency for N.A. and N.P. in the near future.

¶ 46 Because N.A. and N.P. are bonded to their current foster parent, who is able to care for their needs and provide permanency, and respondent is not likely to be restored to fitness

at any time in the near future, we conclude the trial court's decision to terminate respondent's parental rights in the best interest of the minors was not against the manifest weight of the evidence.

¶ 47 III. CONCLUSION

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

¶ 49 Affirmed.