2015 IL App (4th) 141056-U

NO. 4-14-1056

FILED
April 13, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 09JA13
LOUIS KELLY,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court did not err in terminating respondent's parental rights.

¶ 2 In February 2014, the State filed a motion to terminate respondent Louis Kelly's parental rights to his daughter, T.W., born January 17, 2008. Following an evidentiary hearing in July 2014 and a best-interest hearing in October and November 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 T.W.'s best interest to terminate his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In February 2009, the State filed a two-count petition for adjudication of wardship regarding four children born to Tonya W., including T.W., who is the subject of this appeal. The

petition alleged the minors' environment was injurious to their welfare when residing with their mother because they were exposed to domestic violence and substance abuse. 705 ILCS 405/2-3(1)(b) (West 2008). Derek Maze was named as T.W.'s putative father. (Maze was never located, and his parental rights were terminated in August 2011.) In April 2009, the trial court entered an adjudicatory order finding all minors neglected. In its April 2009 dispositional order, the court adjudicated the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 5 T.W.'s mother had been making progress toward T.W.'s return when she died on June 23, 2011. Respondent contacted Lutheran Social Services of Illinois (LSSI) in August 2011, advising them he may be T.W.'s father. He reported a willingness to participate in services and visitation with T.W. In November 2011, genetic testing confirmed respondent was T.W.'s biological father.

¶ 6 In the interim, on September 2, 2011, the State filed a two-count supplemental petition for adjudication of neglect naming respondent as T.W.'s putative father. The petition alleged T.W.'s environment was injurious to her welfare when residing with her mother because she was exposed to domestic violence and substance abuse. 705 ILCS 405/2-3(1)(b) (West 2010).

¶ 7 The record reflects respondent had been a lifelong friend of Tonya W. They were never romantically involved but did have sexual relations one time. After Tonya W.'s death, respondent was told by her sister he might be T.W.'s father. Respondent was married and had two teenage stepchildren. He was employed full-time and had a stable home. Respondent expressed a desire to gain custody of T.W.; however, T.W. had no knowledge of respondent or

the concept of having a father in her life. Respondent had a criminal history, including arrests in 1992 for aggravated battery in a public place, aggravated battery with great bodily harm, aggravated battery with a weapon, and association with two gangs. He was incarcerated in the Department of Corrections (DOC) from July 1992 to November 1995. He was also arrested in 1997 for armed robbery and aggravated robbery. He pleaded guilty to armed robbery and was sentenced to 20 years in DOC. According to respondent, he was released from DOC in 2003.

¶ 8 In December 2011, the trial court found respondent unfit and unable to care for T.W., noting respondent's extensive criminal history and his recent appearance in T.W.'s life. The court found T.W. neglected and continued custody and guardianship with DCFS.

¶ 9 Services were put in place to assist T.W. with getting acquainted with respondent. Respondent cooperated with the recommended services. Visitation between respondent and T.W. was gradually increased and transitioned from supervised to unsupervised visitation. In February 2013, respondent began to have one overnight visit per week with T.W.

¶ 10 At the April 1, 2013, permanency hearing, respondent testified he would be starting a new job in the next week. The job required him to relocate to Memphis, Tennessee, within 30 days. He felt he could not pass up the chance to increase his income to $55,000 a year. Respondent's job as an over-the-road truck driver would require him to be on the road 10 days, followed by 2 days at home. Respondent testified he told T.W. she would be relocating with him and his wife. He did not think T.W. completely understood what he meant. Respondent did not yet have a home in Tennessee but felt with his income he would not have any problem finding a place. He could also pay for child care and his wife would take care of T.W. when she was not working. Respondent asked to be found fit and given custody of T.W.

¶ 11 The trial court acknowledged respondent had made reasonable efforts and substantial progress; however, he had not been restored to fitness. The court did not think it was in T.W.'s best interest to restore custody to respondent. The court felt T.W. was closer to being ready for reunification but was not yet ready and granting respondent custody would completely disrupt T.W.'s life. T.W. had been living with her half-sister in the same foster home since early 2009. The court determined T.W. was not ready to live full-time with respondent, much less be removed from her current home and schools. The court understood respondent's motivation to move and take this new job. However, the court noted the move would delay restoration of custody by virtue of the decreased opportunity to increase visitations. The court continued the prior orders.

¶ 12 In early May 2013, respondent and his wife moved into a residence in Memphis, Tennessee. LSSI completed an interstate-compact request. However, in mid-June 2013, respondent provided a new address in Memphis, so a new interstate-compact request had to be completed. While respondent had been afforded two overnight visits with T.W. beginning in April 2013, he was no longer able to avail himself of weekly visits because of his move. Respondent only participated in three visits after the move. T.W. continued to do well in foster placement; however, the foster mother reported T.W. was regularly experiencing incontinence. T.W. was re-referred for individual counseling to help prepare her for a move to Memphis.

¶ 13 In October 2013, the Tennessee interstate compact was still pending. While respondent's home was considered adequate, it was not yet appropriately furnished for T.W. Respondent was prepared to enroll T.W. in school. Because respondent was no longer able to avail himself of the two overnight visits per week, a new visitation plan was put into place.

Respondent was asked to give LSSI a minimum of 24-hours' notice when he planned to visit. Respondent had not visited T.W. since June 14, 2013. Respondent notified LSSI of his intention to visit on October 18, 2013, but later cancelled due to his work schedule. Respondent requested a phone-visitation plan be established. Arrangements were made with the foster mother for T.W. to call respondent once a day but the plan needed further discussion. With T.W.'s agreement, respondent was able to speak with her by phone on October 24, 2013.

¶ 14 T.W., age 5 in 2013, continued to thrive in foster placement. Her incontinence issue had subsided somewhat. She was attending kindergarten, and the teacher reported T.W. was smart and a joy to be around. T.W. reported she liked school and had many friends.

¶ 15 Prior to respondent's move, he and T.W. appeared to be interacting well, showing affection with each other by hugging, laughing, and engaging in activities with each other. T.W. reported no problems staying the night with respondent. LSSI was proceeding with the goal of reunification. However, LSSI expressed concern about T.W. living with respondent given he would not be home much due to his work schedule. Respondent advised he was looking for other employment with better hours.

¶ 16 As of February 19, 2014, respondent's home in Tennessee was not approved for T.W. to live. According to the Tennessee Department of Children's Services, respondent's criminal activity included an offense that specifically excluded respondent from final approval; therefore, placement with him was denied.

¶ 17 Between October 2013 and February 2014, respondent only visited T.W. a couple of times. The phone visits had been inconsistent.

¶ 18 T.W., age six in 2014, continued to thrive in the foster placement where she had

lived since she was one year old. The incontinence issue had diminished, and she continued to do well in school. The foster mother reported T.W. had not asked about visiting or seeing respondent. Concerns over respondent's work schedule and how that would impact T.W. living with him continued.

¶ 19 On February 25, 2014, the State filed a four-count motion to terminate respondent's parental rights. The motion alleged respondent was unfit for failing to (1) make reasonable efforts to correct the conditions that were the basis for the removal of the minor from him (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minor to him within nine months after an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); (3) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); and (4) make reasonable progress toward the return of the minor during any nine-month period after the end of the initial nine-month period following adjudication of neglect, namely from May 4, 2013, through February 4, 2014 (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 20 On July 1, 2014, the trial court held a fitness hearing for termination purposes. Susan Minyard, Ph.D., a licensed clinical psychologist, testified she had done a psychological evaluation of respondent and found him forthright, confident, and of average intelligence. Minyard found nothing that would impair respondent's ability to parent.

¶ 21 Tammie Roedl, a licensed clinical social worker at LSSI, testified she started counseling respondent in January 2012. Two treatment goals were set, *i.e.*, addressing his misconduct when he was younger and fostering his relationship with T.W. Respondent's attendance was excellent from January until August 2012. Then he missed some appointments

right before Roedl left LSSI. He had achieved his treatment goals, and she had been planning to successfully close his counseling. However, she learned respondent had obtained an order of protection against his wife. Respondent prepared a plan on how to avoid the situation that led to the order of protection, which Roedl found to be reasonable. Roedl, however, felt the order-of-protection issue had not been fully addressed when she had to close out therapy following respondent's missing three appointments.

¶ 22 Selahattin Gokturk, a caseworker for LSSI between October 2010 and January 2013, testified he was respondent's caseworker after respondent was confirmed as T.W.'s father. Gokturk supervised visits between T.W. and respondent. He observed respondent was very attentive, caring, and presented excellent parenting skills. While T.W. seemed a little reluctant to go on the visits and was shy around respondent in the beginning, she warmed up over time and seemed to enjoy the visits. Regarding the order of protection, Gokturk testified respondent told him the order of protection was really meant for someone other than his wife. Later respondent sought to vacate the order. Respondent assured Gokturk, while his relationship with his wife had its ups and downs, generally they had a good relationship and loved each other.

¶ 23 Rachel Kramer, a supervisor at LSSI, testified she dropped in on an overnight visit respondent had with T.W. in March 2013. Kramer observed T.W. interacting with respondent and his wife. T.W. was eating lunch, laughing, and giggling. She appeared to be very comfortable there. Kramer had no concerns. In March 2013, Kramer had a conversation with respondent about his potential move to Tennessee. She advised respondent such a move would significantly delay T.W. being placed in his home because an interstate-compact agreement with Tennessee would have to be implemented.

¶ 24 Marquia Colton testified she was the LSSI caseworker who took over respondent's case from Kramer after respondent moved to Tennessee. She started the interstate-compact process.

¶ 25 Respondent was afforded the opportunity to have overnight visits with T.W. whenever he was able to come to Illinois. Although the plan had been to increase respondent's weekend overnight visits from one night to two, the move resulted in respondent's inability to visit with T.W. every weekend. In fact, between March 26, 2013, and June 27, 2013, respondent only participated in three visits. Between June 27, 2013, and October 28, 2013, respondent had no visits with T.W.

¶ 26 On October 9, 2013, respondent notified Colton he would be able to visit T.W. the coming weekend. However, he later cancelled the visit. Sometime the same month, respondent requested to have phone visits with T.W. once a day. Arrangements were made for respondent to call T.W. at 3:00 every afternoon. Issues arose with respondent's ability to call when he was driving his truck, and, for some reason, it did not work for the foster mother to call him. Consequently, those daily phone visits never occurred. Colton requested phone records because discrepancies in the stories from both sides existed as to why the phone visits had not occurred. Respondent did not comply with this request. The foster mother supplied her records.

¶ 27 Parisha Carter, an LSSI case manager, testified she was assigned to respondent's case in early February 2014. The interstate compact was still pending at the time. On February 19, 2014, Tennessee notified Carter it would not approve respondent's home as a placement for T.W. as a result of respondent's criminal history. As a result, LSSI could not place T.W. with respondent.

¶ 28 Between October 28, 2013, and February 4, 2014, respondent did not have any visits with T.W. On the morning of February 4, 2014, respondent notified the former caseworker he wanted to pick up T.W. from school. Although respondent was to notify LSSI 24 hours in advance of his intent to exercise visitation, respondent was allowed to pick up T.W. from school. Carter met respondent at respondent's mother's home. Respondent had his overnight visitation with T.W. Carter observed the visit for about an hour. T.W. appeared happy.

¶ 29 Over objection, the trial court took judicial notice of respondent's two felony convictions. The court also took judicial notice of a 2012 emergency order of protection respondent had obtained against his wife.

¶ 30 Respondent testified he had been good friends with T.W.'s mother and knew about the DCFS case. He did not know he was T.W's father until after Tonya's death. Respondent had contact with T.W. through her mother, so respondent was not a complete stranger to T.W. Visits with T.W. progressed as previously indicated, *i.e.*, from supervised visits at LSSI to unsupervised overnight visits at respondent's home. T.W. was at first shy, but over time she became completely comfortable around respondent and his wife. Respondent indicated he was currently living in Tennessee with his wife and stepson, who were completely accepting of T.W.

¶ 31 Respondent testified he moved to Tennessee for a better-paying job. He had been working as an over-the-road truck driver. He was home only once every two weeks. He had recently started working for another trucking company and could now be home every night. During the year he had lived in Tennessee, neither his wife nor his stepson had seen T.W.

¶ 32 According to respondent, he stayed in contact with the Illinois caseworkers and

attempted to have continued visits with T.W. Respondent thought he had had four or five overnight visits with T.W. since his move to Tennessee. The visits went extremely well. Respondent tried to set up more in-person visits, but work prevented that from happening. The phone-visitation plans were not very successful.

¶ 33 Respondent testified he had two home visits from Tennessee authorities. He cooperated with them.

¶ 34 After arguments, the trial court took the case under advisement. On July 15, 2014, the court found by clear and convincing evidence respondent was unfit for failing to (1) maintain a reasonable degree of interest, concern, or responsibility for the welfare of T.W. and (2) make reasonable progress toward the return of T.W. during the nine-month period after the end of the initial nine-month period following the adjudication of neglect, *i.e.*, May 4, 2013, through February 4, 2014. The court found respondent had been advised his ability to obtain custody of T.W. would be negatively impacted if he moved to Tennessee. Respondent moved anyway. The court found respondent essentially ceased to visit T.W., having visited T.W. in person only twice from June 14, 2013, until February 4, 2014. In addition, respondent's two felony convictions, which resulted in commitments of 8 and 20 years to DOC, resulted in the denial of placement of T.W. in Tennessee through the interstate compact.

¶ 35 The best-interest hearing was held on October 7, 2014. According to a September 2014 best-interest report, respondent was still residing in Tennessee with his wife. Respondent had moved multiple times in Tennessee, causing concern over long-term stability for T.W. if she was reunited with respondent. LSSI was assisting with supervised two-hour visits and required respondent to notify LSSI within one week if he wanted to visit T.W. Respondent would visit

when he had to be in court or at meetings with LSSI. At the beginning of the visits, T.W. was quiet and timid with respondent and looked back to staff for comfort. Eventually, T.W. would warm up to respondent and engage in small talk and answer questions about her well-being. She would show some affection with respondent. T.W. continued to thrive in foster placement, where she lived with her half-sister. She was promoted to first grade, where she was doing well as an outgoing and friendly student. She was no longer wetting the bed. The foster mother was providing for T.W.'s needs and T.W. appeared to have a strong attachment and love for the foster mother.

¶ 36 Carter testified the visitation plan had reverted back to supervised visits with the requirement respondent give a week's notice of his intent to exercise visitation in February 2014. Despite the fact respondent had not complied with the notification requirement, Carter had accommodated him so he was able to visit T.W on four occasions between February and August 2014. Since then, respondent had visited T.W. only once. According to Carter, it took T.W. some time to warm up to respondent at the visits. Respondent had attempted to schedule a visit on August 20, 2014, when he was going to be in town for a meeting with DCFS personnel; however, he had not provided Carter enough advance notice, and she was unable to facilitate the visit. Plans were in place for respondent to have a visit with T.W. after the court hearing.

¶ 37 At the November 25, 2014, continuation of the best-interest hearing, the trial court considered prior findings and orders, prior reports, and a report and addendum filed that day. The November 12, 2014, best-interest report reflected T.W. continued to thrive in the foster placement, where the foster mother continued to provide a safe and stable home. T.W. called the foster mother "mom." T.W. continued to do well in the first grade.

¶ 38 The November 20, 2014, addendum to the best-interest report reflected a follow-up report regarding the interstate compact. The Tennessee Department of Children's Services reported respondent had not been forthcoming with information at a November 12, 2014, meeting, where inconsistencies in his address and his living arrangements were discussed. There was also a discrepancy with respondent's birth date. Respondent eventually admitted he and his wife were separated and his girlfriend, whom he had been dating for seven months and with whom he was currently living, was five months pregnant. Respondent said he had not informed the Illinois caseworker about his girlfriend or her pregnancy.

¶ 39 The trial court determined it was in T.W.'s best interest to terminate respondent's parental rights. The court noted respondent very rarely spent time with T.W. He did not make changes in his life to accommodate his daughter. Instead, he made changes in his life that took him farther away from T.W. While this choice was in his own best interest, it was not in T.W.'s best interest. The court further found the current circumstances made a viable visitation arrangement impossible because Tennessee denied respondent that right. Respondent could not provide a stable home for T.W. because his life included different spouses, paramours, and residences. Rather than a daughter to respondent, T.W. would be a part-time guest. Despite the prolonged period of time respondent was given to make changes necessary to accommodate a suitable lifestyle for T.W., he had not done so. Therefore, the court found by a preponderance and by clear and convincing evidence it was in T.W.'s best interest to terminate respondent's parental rights.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 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.

¶ 43 A. Fitness Determination

¶ 44 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).

¶ 45 In this case, the trial court found 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)) and (2) make reasonable progress toward the return of the minor during any nine-month period after the end of the initial nine-month period following adjudication of neglect, namely from May 4, 2013, through February 4, 2014 (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 46 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 erred in finding he failed to make reasonable progress toward the return of the minor between May 4, 2013, and February 4, 2014.

¶ 47 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 reasonable progress, 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)).

¶ 48 Here, the evidence at the fitness hearing showed respondent's move to Tennessee in May 2013 resulted in his inability to maintain a regular visitation schedule. He rarely saw T.W. between May 2013 and February 2014. Respondent could not even have T.W. visit him in Tennessee, let alone move into a home with him, because the Tennessee authorities found him ineligible to have T.W. live with him there. Consequently, unless respondent was willing to move back to Illinois, he would not be able to provide a home for T.W. Further, respondent's choices indicated he was not likely to make progress in the near future. He was separated from his wife and living with a pregnant paramour. Therefore, placing T.W. in respondent's parental custody was not foreseeable in the near future.

¶ 49 B. Best-Interest Determination

¶ 50 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.

¶ 51 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).

¶ 52 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.

¶ 53 Here, T.W. has been in foster care since April 2009. She and her older half-sister have lived in the same foster home since then. T.W. has bonded with her foster family, considers the foster parent to be her mother, and is loved and secure in her placement. She attends school and all of her needs are being met. Her foster parent has always indicated a desire to provide permanence for T.W. To the contrary, respondent had moved several times while living in Tennessee, was not forthcoming about his pregnant paramour (while still married), and most importantly, chose to continue to reside in Tennessee, making it impossible to have T.W. placed with him. The trial court's finding it is in T.W.'s best interest to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 54 III. CONCLUSION

¶ 55 For the reasons stated, we affirm the judgment terminating respondent's parental rights.

¶ 56 Affirmed.