2015 IL App (4th) 141083-U

NO. 4-14-1083

FILED
May 5, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: N.H., J.C., and A.J., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA13
JALEESA JOHNSON,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Knecht and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in (1) finding respondent unfit and (2) terminating her parental rights.

¶ 2 In March 2013, the State filed a petition for adjudication of neglect/abuse with respect to N.H., J.C., and A.J., the minor children of respondent, Jaleesa Johnson. In June 2013, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In June 2014, the State filed a motion to terminate respondent's parental rights. In October 2014, the court found respondent unfit. In December 2014, the court found it in the minors' best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2) terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2013, the State filed a petition for adjudication of abuse/neglect and shelter care with respect to respondent's minor children: N.H., born in February 2007; J.C., born in April 2009; and A.J., born in April 2012. In count I, the petition alleged N.H. was abused pursuant to section 2-3(2)(i) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(2)(i) (West 2012)) because respondent inflicts or inflicted physical injury on him. In count II, the petition alleged J.C. and A.J. were abused pursuant to section 2-3(2)(ii) of the Juvenile Court Act (705 ILCS 405/2-3(2)(ii) (West 2012)) in that respondent created a substantial risk of physical injury to them. In count III, the petition alleged all three minors were neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) because their environment was injurious to their welfare when they resided with respondent because the environment exposed them to risk of physical harm. The trial court entered a temporary custody order, finding probable cause to believe the minors were neglected or abused.

¶ 6 In May 2013, the trial court found in favor of the State on counts II and III. In its June 2013 dispositional order, the court found respondent unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline the minors and the health, safety, and best interest of the minors would be jeopardized if they remained in her custody. The court adjudged the minors neglected and abused, made them wards of the court, and placed custody and guardianship of the minors with DCFS.

¶ 7 In June 2014, the State filed a motion to terminate respondent's parental rights. The motion alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the minors' removal (count I) (750 ILCS

50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return of the minors within the initial nine months of the adjudication of neglect or abuse (count II) (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare (count III) (750 ILCS 50/1(D)(b) (West 2012)) .

¶ 8 In September and October 2014, the trial court held hearings on the motion to terminate parental rights. Jeff Nugent, respondent's probation officer, testified she came into his office on November 19, 2013, for what she erroneously thought was a scheduled appointment. Nugent stated she had "a strong odor of alcohol about her." While initially denying she had been drinking, a Breathalyzer test revealed a breath-alcohol content of 0.167. Thereafter, she admitted having "a couple shots of vodka." Nugent requested respondent take a urinalysis test. While she initially complied, she dumped out the sample into the toilet. She later completed the test. On cross-examination, Nugent testified respondent's actions constituted a violation of her probation, but Nugent imposed administrative sanctions instead of filing a violation.

¶ 9 Megan Fitzsimmons, a caseworker at the Center for Youth and Family Solutions (CYFS), testified she assumed case-management duties in August 2013. Prior to that time, respondent's goals were to obtain independent housing, undergo individual and domestic-violence counseling, and complete a parenting-education program. After speaking with Nugent, Fitzsimmons made another referral for respondent to complete a substance-abuse evaluation. Respondent completed the assessment and was recommended for further treatment.

¶ 10 Fitzsimmons testified she supervised the two-hour weekly visits between respondent and the children. Respondent brought snacks and would interact with the minors. Fitzsimmons stated she had "a few concerns" about respondent's parenting, noting she "would often make the children participate in activities that they didn't necessarily want to participate

in." Respondent "would become frustrated, slightly agitated, and kind of take out her frustrations on the children." Fitzsimmons stated the visits were allowed to occur outside the office, but "they appeared stressful for everyone involved." While she interacted with the children at a mall playground, respondent "required quite a bit of assistance" when just walking around the mall. The visits returned to the office, but respondent "continued to struggle managing the children's behaviors when they would test her." When Fitzsimmons attempted to redirect respondent, she "wouldn't listen and she would just continue doing whatever I was trying to redirect her from, and then after the visit she would be very angry with me." Respondent would state she did not feel Fitzsimmons was supporting her and needed a new caseworker. While Fitzsimmons took notes during visits, respondent would "tell the children to behave a certain way because [Fitzsimmons] was writing things down, and that [Fitzsimmons] would record everything they did."

¶ 11 On cross-examination, Fitzsimmons testified respondent had been referred to a domestic-violence course but was terminated in September 2013 for failure to appear at the classes. Respondent completed parenting classes in October 2013 and domestic-violence classes on November 19, 2013, the latter being the date she appeared inebriated in Nugent's office. Fitzsimmons then made a referral for a substance-abuse evaluation in December 2013 and respondent completed the assessment in January 2014. It was recommended respondent undergo treatment. Fitzsimmons stated respondent did not start the treatment between January 2014 and May 2014 because she failed to appear and then had to go through the assessment again. Fitzsimmons stated respondent had been involved in individual counseling "very inconsistently."

¶ 12 The trial court took judicial notice of respondent's 2013 conviction for aggravated battery. Marya Burke, a facilitator at Cognition Works, testified she received a referral for

respondent. In the "Options" program, survivors of domestic violence seek to learn how to identify maladaptive thinking and become better problem solvers. Burke stated respondent began the "Options" program in July 2013 and successfully completed the program. Thereafter, she was referred to the "Impact" program, which focuses on recognizing the impact of domestic violence. Respondent began the program in August 2013 but was terminated due to lack of attendance. She was referred again in October 2013.

¶ 13 Edward King, a substance-abuse counselor at Prairie Center Health Systems, testified respondent was found appropriate for substance-abuse treatment, which she began in January 2014. Respondent completed a three-to-six week "Starting Point" program in April and May 2014. She completed successive levels of treatment. In the "Journey to Family Healing" program, respondent's attendance had been "mostly consistent" and she was making "reasonable progress" toward completion. As of October 2014, respondent had not completed the recommendations made by King for her substance-abuse treatment.

¶ 14 Stephanie Beard, formerly a family therapist at CYFS, testified she received respondent's referral in September 2013. Initially, respondent's attendance was "very good." However, respondent "began cancelling appointments to reschedule later on in the week, but then couldn't come in." Beard found respondent to be "open and honest, but guarded." While being guarded is not unusual, respondent did not improve, which impacted her ability to make progress. Although respondent accepted personal responsibility for her children coming into care, she denied physically abusing N.H. Beard stated she ended her involvement in the case in February 2014, but respondent had not made sufficient progress to successfully complete her goals. Beard stated respondent had not successfully completed individual counseling as of February 2014 and needed to address her substance abuse to make real progress.

¶ 15 Zachary Truex, a former caseworker at CYFS, testified he conducted an assessment with respondent in April 2013. Thereafter, Truex learned respondent had an outstanding warrant for failure to appear. He spoke to her about it, but respondent indicated she had no intention of turning herself in. Truex stated this would have impacted her ability to engage in visitation. Once the warrant issue was resolved, Truex stated respondent's attendance at visits was "fair." He stated the visits "went okay," but "there wasn't much parenting happening." Truex made referrals for respondent to participate in a substance-abuse assessment, individual counseling, domestic-violence counseling, and random drug testing.

¶ 16 Respondent testified she had lived in her own home for a month and was employed by several temporary employment agencies. She stated she had steady employment for approximately a year and sometimes worked 80 hours per week. She has been involved in individual counseling. She believed she was making progress with Beard and would have made more progress had she not been working two jobs. When she had visitation, she stated the visits "went well" and the children appeared happy to see her. Respondent stated transportation was a "very big issue" in getting to services. She stated she had completed classes in relapse prevention and parenting. She also "made the majority" of her drug drops.

¶ 17 Following closing arguments, the trial court found respondent unfit on counts II and III. The court found in respondent's favor on count I.

¶ 18 In December 2014, the trial court conducted the best-interest hearing. The CYFS best-interest report indicated N.H. and A.J. reside in a traditional foster home. Both children are closely bonded to their foster parent and are thriving in the home. N.H.'s visits with respondent were discontinued in May 2014 because they were unproductive and produced negative reactions from N.H.

¶ 19 J.C. resides with his paternal grandmother. He is "very comfortable" in the home and expressed the desire to live there. He reported to his foster mother and his therapist his fear of returning home to respondent, "citing concerns he would not have food, not be safe, and stating his mother was bad." J.C. had not visited with respondent since May 2014, after having "very negative reactions" to the visits and stating he did not want to see his mother.

¶ 20 The trial court found it in the minors' best interest that respondent's parental rights be terminated. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Forfeiture

¶ 23 Initially, we note the State contends respondent has forfeited her argument on appeal because she failed to support the argument section of her brief with citations to the record. See Ill. S. Ct. R. 341(h)(7) (eff. Feb. 6, 2013); *People v. Snow*, 2012 IL App (4th) 110415, ¶ 11, 964 N.E.2d 1139 ("Rule 341(h)(7) requires the contentions raised in the argument section of the brief to be supported by citation to legal authority and the pages of the record relied on" and "failure to do so results in forfeiture of the argument.").

¶ 24 In the reply brief, defense counsel stated he "overlooked" the requirement of Rule 341(h)(7), believing the citations to the record belonged in the statement of facts. As the forfeiture rule is a limitation on the parties and not the jurisdiction of this court (*In re Janine M.A.*, 342 Ill. App. 3d 1041, 1045, 796 N.E.2d 1175, 1179 (2003)), we will address the arguments.

¶ 25 B. Unfitness Findings

¶ 26 Respondent argues the trial court erred in finding her unfit. We disagree.

¶ 27 In a proceeding to terminate a respondent's parental rights, the State must prove

unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 28 In the case *sub judice*, the trial court found respondent unfit, *inter alia*, for failing to make reasonable progress toward the return of the minors within the initial nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)). The initial nine-month period following the adjudication of neglect and abuse ended on February 14, 2014.

¶ 29 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *Janine M.A.*, 342 Ill. App. 3d at 1051, 796 N.E.2d at 1183.

> "[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).

"The law does not afford a parent an unlimited period of time to make reasonable progress toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 30 Here, the evidence indicated respondent failed to make reasonable progress. Respondent failed to obtain housing until September 2014. During visits, respondent had difficulty managing the children and did not engage in much parenting. She also resisted and became angry when Fitzsimmons attempted to redirect her. Although respondent completed a parenting class, she was unable to effectively apply what she may have learned. Respondent was initially not referred for treatment or counseling after a substance-abuse evaluation in October 2013. However, she was thereafter referred after arriving intoxicated at the office of her probation officer in November 2013. In January 2014, respondent completed the assessment and started substance-abuse treatment. However, she failed to attend and had to undergo another assessment. She did not complete the initial "Staring Point" program until April or May 2014, beyond the nine-month period.

¶ 31 Beard stated respondent's alcohol use remained a problem and a stumbling block to making real progress. Respondent also denied physically abusing N.H., telling Beard that N.H. had exaggerated the event. Beard stated respondent's denial prevented her from making any progress in understanding domestic violence and learning better parenting skills.

¶ 32 While respondent may have made some progress, it was near the end or beyond the nine-month period. The evidence shows respondent failed to make demonstrable movement toward reunification with her children. Thus, the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence. Because the grounds of unfitness are independent, we need not address the remaining ground. See *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003) ("As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds.").

¶ 33 C. Best-Interest Findings

¶ 34 Respondent also argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 35 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). 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.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 36 A trial court's finding that termination of parental rights is in a child's best interest will not be reversed on appeal 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 in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 37 The CYFS best-interest report indicated N.H. and A.J. lived together in a licensed foster home. N.H. has developed a strong bond with his foster mother, feels comfortable in the home, and reports he enjoys living in the home. He had not visited with respondent since May 2014, and the best-interest report noted the visits were "very unproductive and produced negative reactions" from N.H. The best-interest report authored by the court-appointed special advocate (CASA) stated N.H. has had behavioral issues at school, but his "behavior had been improving until he believed that he was going to return to his mother."

¶ 38 J.C. lived with his paternal grandmother. He was "very comfortable" in the home and expressed his desire to live there. He had expressed fear to his grandmother about living

with respondent and said he was afraid of her. J.C. had not visited with respondent since May 2014 because of the "very negative reactions" to the visits. Regarding respondent, J.C. "often would say he would like to 'drop a house on her' and that he doesn't feel safe around her." The CASA report noted J.C.'s "biggest fear is that his mother will come and take him."

¶ 39 A.J. had demonstrated a "strong bond and affection toward her foster mother." Since visits with respondent ended in May 2014, A.J. "is much happier in the home and is less clingy to her foster mother."

¶ 40 The trial court noted "the physical safety and welfare" of the children favored termination. Moreover, the court found continuing the children in their current environments would present the least-disruptive placement alternative and provide them with the permanence they need in their lives. Considering the evidence and the best interest of the minors, most importantly their physical safety and welfare, we find the court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 41 III. CONCLUSION

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

¶ 43 Affirmed.