2015 IL App (4th) 141090-U

NOS. 4-14-1090, 4-14-1091 cons.

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: L. H.-S., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v. (No. 4-14-1090)	)	No. 11JA114
JEROME M. SMITH,	)	
Respondent-Appellant.	)	
_____	)	
In re: T.H., a Minor,	)	No. 12JA110
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-14-1091)	)	Honorable
JEROME M. SMITH,	)	Matthew Maurer,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Turner and Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In April and May 2014, the State filed motions to terminate the parental rights of respondent, Jerome M. Smith, as to his minor daughters, T.H. (born October 6, 2012) and L. H.-S. (born October 11, 2011). In June 2014, following a fitness hearing, the trial court found respondent unfit within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). In December 2014, following a best-interest hearing, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing that the trial court's fitness and best-interest determi-

nations were against the manifest weight of the evidence. We disagree and affirm.

¶ 4 I. BACKGROUND

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

¶ 6 A. Events Preceding the State's Motion To Terminate Respondent's Parental Rights

¶ 7 In October 2011, the State filed a wardship petition alleging that L. H.-S., the minor child of Courtney Sheppard, was neglected within the meaning of section 2-3(1) of the Juvenile Court Act of 1987 (Juvenile Act) (705 ILCS 405/2-3(1) (West 2010)). Although respondent was listed as a putative father of L. H.-S., the trial court dismissed respondent from the case after a December 2011 paternity test revealed that respondent was not L. H.-S.'s biological father. (We note, however, that in April 2014, the court allowed respondent to reenter the case as a parent-party after it was determined that respondent had previously signed a voluntary acknowledgement of paternity as to L. H.-S.)

¶ 8 At a June 2012 adjudicatory hearing, Sheppard stipulated that L. H.-S. was neglected within the meaning of section 2-3(1) of the Juvenile Act. Specifically, Sheppard stipulated that L. H.-S.'s environment was injurious to her welfare because L. H.-S.'s sibling (Sheppard's oldest daughter, J.H. (born October 6, 2010)) had been adjudicated neglected, and Sheppard failed to make reasonable progress toward the return of J.H. Following an August 2012 dispositional hearing, the trial court made L. H.-S. a ward of the court and appointed the Department of Children and Family Services (DCFS) as her guardian.

¶ 9 In October 2012, less than a week after T.H. was born, the State filed a wardship petition alleging that T.H. was neglected because her siblings, J.H. and L. H.-S., had been adjudicated neglected and Sheppard failed to make reasonable progress toward the return of J.H. and

L. H.-S.

¶ 10 In November 2012, the State filed a motion to terminate Sheppard's parental rights as to L. H.-S, alleging that Sheppard was unfit as a parent within the meaning of section 1(D)(p) of the Adoption Act (750 ILCS 50/1(D)(p) (West 2012)) because of an inability to discharge her parental responsibilities, supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of a mental impairment, mental illness, or an intellectual disability, and sufficient justification existed to believe that the inability to discharge parental responsibilities would extend beyond a reasonable time period.

¶ 11 In February 2013, the State filed a second petition for adjudication of neglect as to T.H., which also sought termination of Sheppard's parental rights as to T.H. pursuant to section 2-13(4) of the Juvenile Act (705 ILCS 405/2-13(4) (West 2012)). This petition alleged, in pertinent part, that (1) T.H. was neglected within the meaning of section 2-3(1) of the Juvenile Act in that her environment was injurious to her welfare because her siblings had already been adjudicated neglected and Sheppard failed to make reasonable progress toward their return; and (2) Sheppard was unfit as a parent within the meaning of section 1(D)(p) of the Adoption Act.

¶ 12 At a March 2013 hearing, Sheppard stipulated that (1) T.H. was neglected within the meaning of section 2-3(1) of the Juvenile Act, as alleged in the State's October 2012 petition; and (2) Sheppard was unfit as a parent within the meaning of section 1(D)(p) of the Adoption Act, as alleged in the State's November 2012 motion relating to L. H.-S. and February 2013 petition relating to T.H. Pursuant to Sheppard's stipulation, the trial court (1) adjudicated T.H. neglected within the meaning of section 2-3(1) of the Juvenile Act and (2) found Sheppard unfit within the meaning of section 1(D)(p) of the Adoption Act.

¶ 13 Following an April 2013 best-interest hearing, the trial court terminated Shep-

pard's parental rights as to L. H.-S., but it concluded that it was not in T.H.'s best interest to terminate Sheppard's parental rights as to her. Instead, the court made T.H. a ward of the court and appointed DCFS as her guardian. As part of its dispositional order pertaining to T.H., the court ordered Sheppard and respondent to comply with the terms of their DCFS service plans and correct the conditions that brought the minors into care.

¶ 14 Sheppard appealed the termination of her parental rights as to L. H.-S. In August 2013, however, while the appeal was pending, Sheppard died. This court dismissed the appeal in October 2013.

¶ 15 On April 3, 2014, the trial court allowed respondent to reenter the case pertaining to L. H.-S. after the court determined that respondent previously signed a voluntary acknowledgment of paternity as to L. H.-S.

¶ 16 B. The State's Motion To Terminate Parental Rights

¶ 17 On April 30, 2014, the State filed a motion to terminate respondent's parental rights as to T.H., alleging that respondent was an unfit parent within the meaning of section 1(D) of the Adoption Act in that he (1) failed to maintain a reasonable degree of interest, concern, or responsibility for T.H.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) failed to make reasonable efforts to correct the conditions that brought T.H. into care (750 ILCS 50/1(D)(m)(i) (West 2012)); (3) failed to make reasonable progress toward the return of T.H. within nine months after the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (4) had an inability to discharge his parental responsibilities, supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of a mental impairment, mental illness, or an intellectual disability, and there was sufficient justification to believe that the inability to discharge parental responsibilities would extend beyond a reasonable time period (750 ILCS

50/1(D)(p) (West 2012)).

¶ 18 In May 2014, the State filed a motion to terminate respondent's parental rights as to L. H.-S., alleging that respondent was unfit within the meaning of section 1(D)(p) of the Adoption Act. (This allegation was identical to the allegation in the State's motion to terminate respondent's parental rights as to T.H.)

¶ 19 1. *The June 2014 Fitness Hearing*

¶ 20 The parties presented the following pertinent evidence at the June 2014 fitness hearing on the State's motions to terminate respondent's parental rights as to T.H. and L. H.-S.

¶ 21 Linda Lanier, a licensed clinical psychologist who the parties stipulated was an expert in her field, testified that she conducted a psychological evaluation of respondent in September 2013. After conducting a multitude of psychological diagnostic tests, Lanier found that respondent experienced very high levels of parenting stress. Respondent was also "in the low average" range in terms of "adaptive living," which measured the ability to perform basic adult responsibilities such as living alone and managing transportation and finances. An intelligence quotient (IQ) test revealed that defendant had an IQ of 69, which Lanier testified falls into the "mildly mentally deficient range, formerly called 'mentally retarded.' " Respondent had below a third-grade reading level, which Lanier characterized as functionally illiterate, meaning respondent was unable "to benefit from written information."

¶ 22 Lanier also noted that respondent failed to attend the first scheduled psychological evaluation. When respondent appeared at the second scheduled evaluation, Lanier found that his "insight and judgment were very low" in that he "seemed confused about why he was there." Lanier had to explain the purpose of the evaluation to respondent several times. When it came time to conduct the diagnostic tests, respondent would often get lost or distracted, which required

Lanier to repeat the instructions.

¶ 23 Lanier explained that parents who suffer from the same low mental functioning as respondent, although often able to manage routine, simple tasks, become easily overwhelmed by novel situations or multiple demands. Based upon respondent's intellectual impairment, Lanier concluded that he would be unable to perform "minimally appropriate parenting." Upon the trial court's request for clarification, Lanier confirmed that respondent "would be unable to discharge parental responsibilities" and such inability "would extend beyond a reasonable period of time."

¶ 24 Mary Reindl, who worked as a foster-care caseworker at Family Service Center (FSC) (a DCFS contractor), testified that she was assigned as the caseworker for L. H.-S. and T.H.'s cases from April 2013 until May 2014. In April 2013, FSC created a service plan for respondent, which required him to complete certain goals related to (1) obtaining a substance-abuse assessment and treatment, (2) housing, (3) visitation, (4) parenting, and (5) counseling. FSC provided respondent with the necessary referrals to enable him to complete his service-plan goals.

¶ 25 At an October 2013 administrative-case-review meeting, Reindl determined that respondent had failed to complete any of his service-plan goals except for the goals pertaining to parenting and substance abuse. Of the 43 scheduled visits with T.H., respondent attended only 30. Respondent missed these visits even though he lived within walking distance of the visiting location and FSC provided him with bus tokens. Respondent refused to participate in counseling. Respondent stated that he did not attend his first psychological evaluation because "he was tired." Reindl was unable to deem respondent compliant with his service-plan goal pertaining to housing because respondent never allowed Reindl to enter his home.

¶ 26 At an April 2014 administrative-case-review meeting, Reindl determined that re-

spondent failed to comply with any of his service-plan goals. According to Reindl, respondent stated at the April 2014 meeting that "he would not cooperate and didn't want any further involvement or services." Respondent maintained this position even after Reindl explained to him that he needed to complete his service-plan goals in order to have T.H. returned to his care. Reindl testified that throughout most of the case, respondent would contact her only when he was "upset about the amount of child support he was paying."

¶ 27 Respondent testified that he was 35 years old, worked full-time at Walmart, and lived alone in a house that he rented in Springfield. When asked whether he disagreed with any aspect of Lanier's psychological evaluation, respondent testified, "I disagree with all of it. I know I can do awesome." Respondent stated that he kept diapers and wipes at his house, as well as a child seat in his van. Respondent claimed that he missed visits with T.H. because of "weather and gas."

¶ 28 Following the presentation of evidence and argument, the trial court found respondent unfit for all the reasons set forth in the State's motions to terminate parental rights.

¶ 29 2. *The December 2014 Best-Interest Hearing*

¶ 30 The parties presented the following evidence at the December 2014 best-interest hearing.

¶ 31 Samantha Williams, who was the FSC caseworker for T.H. and L. H.-S. at the time of the best-interest hearing, testified that both children were in foster placement with their older sister, J.H., in the home of Larry and Shirley Davis. All three sisters have lived in the Davis home for almost their entire lives. The Davises were willing to adopt all three girls. Williams testified that the Davises adequately provided for the girls' educational, medical, religious, and social needs. The children had an affectionate and loving relationship with their foster parents.

¶ 32 Williams further testified that respondent had not seen the children since October 2014. When Williams attempted to contact respondent to arrange visits with the children during the holidays, respondent would set his phone so that it would not accept calls. Williams testified that termination of respondent's parental rights was in the best interest of T.H. and L. H.-S.

¶ 33 Respondent testified that he has had 10 or 12 visits with L. H.-S. since 2011 and 3 or 4 visits with T.H. since 2012. Respondent estimated that he had only one visit with the children in 2014. At the time of the hearing, respondent had just moved into an apartment in Springfield, which he testified had multiple bedrooms and adequate furnishings for the children.

¶ 34 Following the presentation of evidence and argument, the trial court found the evidence was "overwhelming" that it was in the children's best interest to terminate respondent's parental rights.

¶ 35 These appeals followed, which we consolidated.

¶ 36 II. ANALYSIS

¶ 37 Respondent argues that the trial court's fitness and best-interest determinations were against the manifest weight of the evidence. We disagree.

¶ 38 A. The Trial Court's Fitness Determination

¶ 39 The State has the burden of proving that a parent is unfit by clear and convincing evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28, 22 N.E.3d 1241. We will affirm the trial court's fitness determination unless it is against the manifest weight of the evidence. *Id.* We give the trial court's determination great deference because the trial court is in the best position to observe the witnesses and evaluate their credibility. *Id.* If we conclude that the State proved a parent unfit on any one of the grounds alleged in the motion to terminate parental rights, we need not address the remaining grounds set forth in the motion. *Id.*

¶ 40 Under section 1(D)(p) of the Adoption Act, "a parent may be found unfit if the parent suffers from a mental impairment which renders him or her unable to discharge a parent's normal responsibilities for a reasonable period of time." *In re Charles A.*, 367 Ill. App. 3d 800, 804, 856 N.E.2d 569, 573-74 (2006). A finding under section 1(D)(p) of the Adoption Act must be "supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist." 750 ILCS 50/1(D)(p) (West 2102).

¶ 41 In this case, respondent stipulated that Lanier was a licensed clinical psychologist and an expert in her field. Lanier testified that respondent's low IQ of 69 fell into the "mildly mentally deficient range, formerly called 'mentally retarded.' " Parents with such low mental functioning become easily overwhelmed by novel situations or multiple demands. Lanier concluded that respondent was unable to perform "minimally appropriate parenting" and that this inability "would extend beyond a reasonable period of time." Based upon Lanier's uncontroverted testimony, the trial court's determination that respondent was unfit within the meaning of section 1(D)(p) of the Adoption Act was not against the manifest weight of the evidence.

¶ 42 Because we conclude the State proved respondent unfit within the meaning of section 1(D)(p) of the Adoption Act, we need not address the remaining grounds upon which the trial court found respondent unfit. *S.H.*, 2014 IL App (3d) 140500, ¶ 28, 22 N.E.3d 1241.

¶ 43 B. The Trial Court's Best-Interest Determination

¶ 44 At the best-interest stage of parental-termination proceedings, the State bears the burden of proving by a preponderance of the evidence that termination of parental rights is in the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290-91 (2009). Consequently, at the best-interest stage of termination proceedings, " 'the parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving

home life.' [Citation.]" *In re T.A.*, 359 Ill. App. 3d 953, 959, 835 N.E.2d 908, 912 (2005).

¶ 45 "We will not reverse the trial court's best-interest determination unless it was against the manifest weight of the evidence." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291. A best-interest determination is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result. *Id.*

¶ 46 In this case, the evidence showed that L. H.-S. and T.H., along with their sister, J.H., were living together in a loving, nurturing foster family that was willing to adopt all three girls. The foster parents provided for the children's educational, medical, religious, and social needs. The evidence showed that respondent, on the other hand, was not only incapable of caring for the children as a single father, but also generally disinterested in doing so. Respondent frequently missed visits and even told his caseworker that he would not comply with the service-plan requirements he needed to regain custody of the children.

¶ 47 Based upon the evidence presented, we agree with the trial court's finding that the evidence overwhelmingly favored termination of respondent's parental rights.

¶ 48 III. CONCLUSION

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

¶ 50 Affirmed.