2015 IL App (4th) 150022-U

NO. 4-15-0022

FILED
May 29, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Macon County
v.	)	No. 13JA34
JORDAN BANTON,	)	
Respondent-Appellant.	)	Honorable
	)	Thomas E. Little,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The trial court committed no error in terminating respondent's parental rights.

¶ 2 Respondent, Jordan Banton, appeals the trial court's termination of his parental rights to his child, J.B. (born March 20, 2013). He challenges both the court's fitness and best-interest determinations. We affirm.

¶ 3 I. BACKGROUND

¶ 4 The record shows J.B. was taken into protective custody shortly following his birth. On April 2, 2013, the State filed a petition alleging he was a neglected or abused minor, and it was in his best interest to be adjudicated a ward of the court. The State based its neglect and abuse claims on allegations that, around the time of J.B.'s birth, J.B.'s mother tested positive for OxyContin, a drug for which she did not have a prescription; J.B. suffered withdrawal symp-

toms; J.B.'s mother covered her arms with long-sleeve shirts under her hospital gown to hide needle track marks on her arms; J.B.'s mother was diagnosed as bipolar but had not been taking her medication due to her pregnancy; and a police search of J.B.'s mother's home recovered hypodermic needles and syringes, one of which contained an unknown substance.

¶ 5 On June 10, 2013, the trial court entered an adjudicatory order, finding J.B. was a neglected minor as alleged in the State's petition. The same day, the court entered its dispositional order, adjudicating J.B. neglected, making him a ward of the court, and placing custody and guardianship of J.B. with the Illinois Department of Children and Family Services. During the underlying proceedings, J.B.'s mother executed a final and irrevocable surrender of her parental rights. Ultimately, the trial court entered an order terminating her parental rights and she is not a party to this appeal.

¶ 6 On October 23, 2014, the State filed a motion to terminate respondent's parental rights. It alleged respondent failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to J.B.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) make reasonable efforts to correct the conditions that were the basis for J.B.'s removal during any nine-month period following the neglect adjudication (750 ILCS 50/1(D)(m)(i) (West 2012)); or (3) make reasonable progress toward J.B.'s return during any nine-month period following the neglect adjudication, specifically, June 10, 2013, to March 10, 2014, and January 10, 2014, to October 10, 2014 (750 ILCS 50/1(D)(m)(ii), (iii) (West 2012)). The State also alleged termination of respondent's parental rights was in J.B.'s best interest.

¶ 7 On January 5, 2015, the trial court conducted a fitness hearing in the matter. Evidence showed respondent was incarcerated in the Macon County jail shortly after J.B. was taken

into protective custody. He remained in jail for approximately three months, until August 2013, when he was taken into the custody of the Illinois Department of Corrections (DOC). Respondent remained in DOC through the date of the termination proceedings.

¶ 8 Melanie Ishmael testified she was J.B.'s caseworker from April 2013, when the minor was first taken into care, until March 2014. Ishmael developed a service plan for respondent, whose services included "mental health, cooperation, parenting[,] and substance abuse." In December 2013, she evaluated respondent's service plan and gave him an unsatisfactory rating because he had not completed any services.

¶ 9 Ishmael testified respondent signed off on his service plan in June 2013, while he was still in jail, and reported he intended to engage in services while in DOC. Once in DOC, respondent sent a letter to Ishmael asking for visitations with J.B., which were allowed. During a visitation on September 3, 2013, respondent informed Ishmael that he was on a waiting list for all of his services. On March 10, 2014, respondent reported he was in services, including substance-abuse services, and was taking medication. However, according to Ishmael, respondent never provided any documentation to support his claims despite reminders that he needed documentation to receive a satisfactory rating on his service plan. On cross-examination, Ishmael testified she was aware respondent faced federal charges and was "transferred back and forth" to attend hearings in connection with those charges.

¶ 10 Katie Worland testified that, beginning in March 2014, she was the caseworker for J.B.'s case. She met respondent in person three times when escorting J.B. to DOC for visitations. Worland denied that respondent ever provided her with documentation showing he participated in services. Specifically, she recalled seeing respondent on July 22, 2014, at which time

he did not have documentation regarding substance-abuse services he reportedly engaged in, and he asserted he was on a waiting list for parenting and mental-health services. Worland stated she reminded respondent of the need for documentation each time she saw him. In September 2014, she evaluated respondent's service plan and gave him an unsatisfactory rating for failing to complete services and keep in contact with his caseworker. On cross-examination, Worland stated she was aware that respondent had federal charges pending against him and he reported to her that he had been "going back and forth to Champaign, Illinois," to attend court hearings for his federal case.

¶ 11 Respondent testified on his own behalf. He stated he was aware before going to DOC that he needed to participate in mental-health, substance-abuse, and parenting services. Shortly after arriving at DOC, he saw a psychiatrist and, since his first week there, had been taking medication. Respondent asserted he was also "taking group therapy for [post-traumatic stress disorder] twice a week." He stated he asked "[t]he lady that did the group therapy" about documentation but she stated she "had nothing to give [him]." Respondent also testified that from December 2013 to March 2014, he engaged in a substance-abuse-treatment program at Graham Correctional Center (Graham). The program was supposed to last for nine months but respondent was unable to complete the program because he was temporarily moved from Graham to a different correctional facility to appear in court in connection with his pending federal charges. When he returned to Graham, he asked to return to the substance-abuse program but was told "there would be a waiting list." According to respondent, he had "to be put back in for it" each time he returned to Graham after appearing in federal court.

¶ 12 With respect to parenting services, respondent testified he was involved in "a fa-

therhood initiative at the chapel in Graham," which was the only parenting program available at the prison. He stated he was not given any documentation regarding the "fatherhood initiative," asserting it was "not that type of program." Respondent testified the "fatherhood initiative" was not a class and did not have a curriculum. Instead, he described it as "a group of dads" who talked "about how to better yourself to be a better father for when you leave [DOC]." On cross-examination, he clarified that a fellow inmate who worked for Graham's chaplain ran the "fatherhood initiative" group. The inmate could not give respondent documentation regarding his participation but respondent had recently been told that caseworkers could contact the chaplain. Respondent asserted he was involved in the fatherhood-initiative group beginning in October 2013, but his participation was interrupted each time he was temporarily removed from Graham to attend hearings in connection with his federal case.

¶ 13 Respondent further testified he had been sentenced to a term of 30 months' imprisonment in federal custody. His federal sentence was set to begin in February 2015 and he was required to serve 85% of his sentence. While in federal custody, he was required to complete a drug-rehabilitation program, which he described as a 12-month, inpatient, intensive therapy program that would remove 12 months from his sentence. Respondent estimated he would be out of federal custody in 12 months and stated he would be required to spend 6 months in a halfway house. On cross-examination, respondent testified his federal prison sentence was for using a device of interstate commerce to transport an illicit substance and to convey false information.

¶ 14 At the conclusion of the fitness hearing, the trial court found respondent unfit based upon each asserted ground alleged by the State in its motion to terminate parental rights.

Without objection, the court immediately proceeded with a best-interest hearing.

¶ 15 At the hearing, the State's only evidence was the best-interest report. The report showed respondent had been in DOC since August 9, 2013. He was scheduled for release in February 2015, but he would then go to Oklahoma City, Oklahoma, to serve an extended sentence in federal prison. The report detailed caseworkers' attempts to obtain documentation from respondent that would have shown his active participation in services while in DOC. According to the report, respondent asserted it was difficult to obtain documents while imprisoned and "that since he ha[d] been traveling to Champaign, [Illinois,] so often for his pending criminal federal case[,] it was hard to stay in any classes at Graham." The report stated respondent had not completed any services since J.B. was first taken into care in March 2013.

¶ 16 The best-interest report also showed J.B. was in relative foster care with his paternal cousin. He had been in his foster home since June 19, 2013, and was described as having "blossomed into an energetic young toddler." According to the report, J.B. was "loved and well cared for in his foster home." Also, there were no concerns regarding his health, safety, or well-being.

¶ 17 Respondent testified on his own behalf. He described the actions he intended to take so that he could take care of J.B. Specifically, respondent planned to fully complete the drug-treatment program required in connection with his federal prison sentence and stated that he was working on getting his general equivalency degree. He testified he also planned on "staying clean." Respondent expressed that he loved J.B. and wanted to do what was best for him. Additionally, he believed he would be out of prison in approximately February 2016, at which time he would be in a position to start taking care of J.B.

¶ 18 Following the parties' arguments, the trial court found termination of respondent's parental rights was in J.B.'s best interest. On January 5, 2015, the court entered a written order terminating respondent's parental rights to J.B.

¶ 19 This appeal followed.

¶ 20 II. ANALYSIS

¶ 21 On appeal, respondent argues the trial court erred in terminating his parental rights. He contends the court's findings that he was unfit and that termination was in J.B.'s best interest were against the manifest weight of the evidence.

¶ 22 To involuntarily terminate parental rights, a trial court must find (1) that the State has proved, by clear and convincing evidence, that a parent is unfit as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) and (2) termination is in the child's best interest. *In re J.L.*, 236 Ill. 2d 329, 337-38, 924 N.E.2d 961, 966 (2010). "A parent's rights may be terminated if even a single alleged ground for unfitness is supported by clear and convincing evidence." *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005). "A reviewing court will not reverse a trial court's fitness finding unless it was contrary to the manifest weight of the evidence, meaning that the opposite conclusion is clearly evident from a review of the record." *In re A.L.*, 409 Ill. App. 3d 492, 500, 949 N.E.2d 1123, 1129 (2011).

¶ 23 Here, the State alleged, and the trial court found, that respondent was unfit based upon multiple grounds. For the reasons that follow, we find the evidence was sufficient to support the court's finding that respondent was unfit for failing to make reasonable progress toward J.B.'s return during the two separate nine-month time frames alleged by the State—specifically, June 10, 2013, to March 10, 2014, and January 10, 2014, to October 10, 2014.

¶ 24 Under the Adoption Act, an unfit parent includes any parent who fails to make reasonable progress toward his or her child's return during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(m)(ii), (iii) (West 2012). In addressing section 1(D)(m), the supreme court has stated as follows:

> "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act encompasses the parent's compliance with the service plans and the court's directives, in light of the condition which gave rise to the removal of the child, and in light of other conditions which later become known and which would prevent the court from returning custody of the child to the parent." *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001).

Additionally, this court has defined "reasonable progress" as follows:

> " 'Reasonable progress' is an objective standard which exists when the court, based on the evidence before it, can conclude that the progress being made by a parent to comply with directives given for the return of the child is sufficiently demonstrable and of such a quality that the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the

child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

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

¶ 25 Here, the evidence showed respondent failed to complete any of his required services and consistently received unsatisfactory ratings on his service plans during both of the nine-month time frames alleged by the State. On appeal, respondent points out that he began participating in services while in prison but his progress was "hindered due to his numerous transfers for his federal case." First, respondent's own testimony provided the only evidence of his alleged participation in services while imprisoned. Caseworkers testified they provided repeated reminders that documentation was necessary to support respondent's claims; however, respondent never provided any documentation to show he actively engaged in any services. Further, we note the trial court was in a superior position to evaluate witness credibility and, in this case, expressly found respondent's testimony was not credible. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004) (holding the trial court's findings as to parental fitness "must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility").

¶ 26 Second, although respondent's imprisonment and pending federal charges (of which he was ultimately convicted) may have negatively impacted his ability to meet the requirements of his service plans, respondent's circumstances were of his own making. We note that, "in determining whether a parent has made reasonable progress toward the return of the

child, courts are to consider evidence occurring only during the relevant nine-month period mandated in section 1(D)(m)." *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968. "Time in prison is included in the nine-month period during which reasonable progress must be made." *In re F.P.*, 2014 IL App (4th) 140360, ¶ 89, 19 N.E.3d 227; see also *J.L.*, 236 Ill. 2d at 341, 924 N.E.2d at 968 (holding "that time spent in prison does not toll the nine-month period" under which reasonable progress must be made).

¶ 27 In this instance, respondent was in prison during most of the time J.B.'s case was pending. Upon his release from DOC, he was set to begin serving a 30-month federal prison sentence. While imprisoned, respondent failed to complete any required services. He also failed to present his caseworkers with proof that he took steps toward complying with his service plan. Given this evidence, the record reflects it is unlikely respondent would be able to parent J.B. at any time in the near future. The trial court's fitness determination was not against the manifest weight of the evidence.

¶ 28 On appeal, respondent also challenges the trial court's best-interest finding, arguing it was against the manifest weight of the evidence. He points to his testimony that he would likely be released from federal prison in February 2016 and "hope[d] to be able to fully care for [J.B.]" at that time. Further, respondent contends the court "should have focused on the positives instead of the negatives when it made its best[-]interest finding" and the record clearly showed he loved J.B.

¶ 29 "After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interest." *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071, 918 N.E.2d 284, 290 (2009). At the best-interest hearing, the State must prove, by a preponderance of the

evidence, that termination is in the child's best interest. *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 290-91. The Juvenile Court Act of 1987 sets forth several factors a court must consider "in the context of the child's age and developmental needs" when making a best-interest determination, including: (1) the child's physical safety and welfare; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (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 parental figures, siblings, and other relatives; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 30 "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 Shru. R.*, 2014 IL App (4th) 140275, ¶ 24, 16 N.E.3d 930. "A decision is against the manifest weight of the evidence only if the facts clearly demonstrate that the court should have reached the opposite result." *Jay. H.*, 395 Ill. App. 3d at 1071, 918 N.E.2d at 291.

¶ 31 Here, the record reflects J.B. had been in the same relative foster home since June 2013, when he was approximately three months old. Evidence showed J.B. was loved and well cared for in the home, and there were no concerns regarding his health, safety, or well-being. Conversely, respondent, as a result of his own poor choices, had been imprisoned for the majority of J.B.'s life and was unable to care for J.B. as a parent. Although respondent expressed love

for J.B and hoped to care for him upon being released from prison, the evidence failed to reflect respondent had completed any of the necessary services detailed by his service plans. In short, there was nothing in the record to indicate that respondent would be able to begin caring for J.B. upon his release from prison or at any point thereafter.

¶ 32 We note the evidence at the best-interest hearing failed to show whether J.B.'s relative foster care placement would provide him with permanency. However, this court has stated that a child's interest in a loving, stable, and safe home might be best served by freeing the child for adoption, even when no one has yet offered to adopt the child. *F.P.*, 2014 IL App (4th) 140360, ¶ 92, 19 N.E.3d 227 (quoting *In re D.T.*, 212 Ill.2d 347, 363-64, 818 N.E.2d 1214, 1226 (2004)). Here, the trial court determined that termination of respondent's parental rights was in J.B.'s best interest. The facts do not clearly demonstrate that the court should have reached an opposite result and its best-interest finding was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

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

¶ 35 Affirmed.