2015 IL App (4th) 150038-U

NO. 4-15-0038

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 15, 2015
Carla Bender
4th District Appellate
Court, IL

In re: A.R. and S.R., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 11JA26
ANTOWAN REED,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court reversed, concluding the trial court's unfitness finding was against the manifest weight of the evidence.

¶ 2 In May 2013, the State filed a petition to terminate the parental rights of respondent, Antowan Reed, as to his children, A.R. (born November 26, 2002) and S.R. (born April 28, 2004). Following an October 2013 hearing, the trial court found respondent unfit. In January 2015, the court determined it was in the best interest of the children to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the trial court erred in finding him unfit and determining it was in the children's best interest to terminate his parental rights. For the following reasons, we reverse.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In April 2011, respondent mother, Symone Simmons, was threatened, assaulted, and battered by her paramour, Ashton Smith-Littleton, in front of her youngest child. At the time, respondent mother had custody of four children: A.R. and S.R., fathered by respondent, and two children fathered by Smith-Littleton, who are not subject to this appeal. Respondent mother is not a party to this appeal.

¶ 7 Later that month, the State filed a petition for adjudication of neglect, alleging the children were in an environment injurious to their health in that they were exposed to domestic violence. 705 ILCS 405/2-3(1)(b) (West 2010). Though the immediate concern was the domestic violence between respondent mother and her paramour, respondent mother also alleged respondent committed acts of domestic violence against her throughout their relationship, which ended in 2009.

¶ 8 In June 2011, the trial court accepted the respondent mother's stipulation to the State's petition and adjudicated the minors neglected. Later that month, the court entered an adjudicatory order as to respondent. In July 2011, the court entered a dispositional order finding (1) respondent unfit and unable to care for, protect, train, or discipline the minors due, in part, to his "significant history of domestic violence" with respondent mother; and (2) it was therefore in the best interest of the children to grant custody and guardianship to the Department of Children and Family Services (DCFS).

¶ 9 B. Termination Proceedings

¶ 10 In May 2013, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for DCFS taking the children into custody (750 ILCS

50/1(D)(m)(i) (West 2012)) (count I); (2) make reasonable progress toward the return home of the children during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children (750 ILCS 50/1(D)(b) (West 2012)) (count III).

¶ 11 1. *Fitness Hearing*

¶ 12 In August 2013, the trial court commenced a fitness hearing, which spanned three separate days from August to October 2013. During the hearing, the parties presented the following relevant evidence.

¶ 13 Arnetha Truss, a case manager with DCFS, served as the family's case manager from May 2011 until November 2011. After a brief maternity leave, she reassumed her duties from February 2012 until April or May 2012. As part of her duties, she completed an integrated assessment for each family member. Respondent mother reported a history of domestic violence by respondent during their relationship, alleging one instance of domestic abuse caused her to miscarry. Respondent mother indicated the abuse is what led her to discontinue the relationship in 2009. Truss also conducted an interview with respondent. Respondent did not report any domestic violence between him and respondent mother but agreed they did not get along.

¶ 14 Following the integrated assessment, Truss referred respondent to domestic-violence counseling, and respondent subsequently enrolled in the Peace Program though Crosspoint Human Services. Truss also referred respondent for a substance-abuse assessment, which he completed. Truss agreed respondent was cooperative with her. She supervised a few visits between the children and respondent and described those visits as going "really, really well." Respondent resided in Danville with his paramour and their child. While conducting a

background check into respondent and his paramour, Truss discovered respondent's paramour had an outstanding warrant for criminal trespass.

¶ 15 Tracy Hewitt served as an interim caseworker for the family from November 2011 through January 2012, while Truss was on maternity leave. Hewitt noted respondent was unemployed when she assumed the case, as he had just been laid off from working at Masterguard. Respondent never reported any domestic violence in his relationship with his paramour.

¶ 16 Rachel Cravens testified she works at Crosspoint Human Services as the coordinator for the Peace Program, which provides domestic-violence counseling for male abusers. Cravens received a referral for respondent and subsequently conducted an assessment to determine whether he was appropriate for the program. Respondent subsequently entered the program in September 2011. Respondent attended the 25-week program regularly and was an active participant in the sessions. From respondent's interactions and assignments, Craven believed respondent was learning from the program. He successfully completed the program in April 2012.

¶ 17 From May 2012 through December 2012, Kanitra Keaton, a foster-care supervisor for the Center for Youth and Family Solutions, assumed duties as the family's case manager. During this time, respondent reported no problems in his relationship with his paramour. Respondent remained unemployed. However, he complied with services, including random drug testing. Though he never tested positive for a controlled substance, he tested positive for alcohol on two occasions. In August 2012, respondent submitted a blood-alcohol concentration (BAC) of 0.017. In October 2012, respondent submitted a BAC of 0.046. Keaton did not refer respondent for any counseling as a result of the positive tests. Additionally, Keaton described

defendant as cooperative with her and services. Respondent had unsupervised visits with the children while Keaton was the case manager, so she did not observe much of his interaction with the children. However, nothing she saw during her limited observation time caused her any concern.

¶ 18 During separate permanency-review periods in February, May, August, and November 2012, the trial court entered orders finding respondent had made reasonable and substantial progress and reasonable efforts.

¶ 19 In December 2012, the children were returned to respondent's custody. Jessica Lofu, a child-welfare supervisor with Lutheran Social Services, testified, in February 2013, she became the family's case manager. As part of his service plan, respondent submitted to random drug testing. Respondent also attended all counseling sessions to which he was referred.

¶ 20 Lofu also testified, in February 2013, S.R. told her about witnessing a physical altercation between respondent and his paramour. As a result, the children were removed from respondent's custody. Respondent denied a physical altercation occurred. During the visits that followed, respondent participated in all offered visits and engaged appropriately with the children.

¶ 21 Following a March 2013 permanency hearing, the court found respondent had made neither reasonable and substantial progress nor reasonable efforts because "overnight visitation had broken down due to reports of domestic violence." Nothing in the record demonstrates respondent was given another referral for domestic-violence counseling as a result of these alleged incidents.

¶ 22 Bill Fraley, a therapist with Lutheran Social Services, testified he provided individual counseling and parenting classes for respondent. He began counseling respondent in

March 2013. Respondent successfully completed parenting classes in May 2013 with "really good" attendance. He missed one day due to illness but called ahead of time and rescheduled for another day, which he attended. Respondent also completed his individual counseling successfully in May 2013. Fraley believed respondent had made sufficient progress in counseling based on respondent's input during group counseling, his understanding of the material, and his responses to the material. In counseling, respondent addressed the stressors in his life and how to handle them.

¶ 23 Respondent testified his relationship with his paramour was stable. He was unemployed, having last been employed four months prior at local factory providing temporary work. While unemployed, he accepted small jobs for his uncle. He explained he was diligently looking for work. In the meantime, respondent testified he successfully completed parenting and domestic-violence classes as required. He also engaged in individual counseling of his own volition. According to respondent, while the children resided with him, the children were doing well and got along with respondent's other child. Respondent described his domestic-violence counseling through the Peace Program as helping him to improve his parenting skills and interactions with the children.

¶ 24 Following the presentation of evidence, the trial court found respondent unfit on all grounds contained in the State's petition. In its written order, the court relied upon the following facts: (1) respondent's paramour failing to fully cooperate with DCFS, (2) respondent testing positive for alcohol on two occasions, (3) respondent's counseling sessions failing to address his relationship with his paramour, and (4) the history of domestic violence between respondent and respondent mother.

¶ 25 2. *Best-Interest Hearing*

¶ 26 In November 2013, the trial court convened a best-interest hearing. Following the presentation of evidence, the court terminated the parental rights of respondent mother but retained respondent's parental rights. However, in January 2015, after continuing the case numerous times for review, the court terminated respondent's parental rights.

¶ 27 This appeal followed.

¶ 28 II. ANALYSIS

¶ 29 On appeal, respondent argues the trial court erred in finding him unfit and determining it was in the children's best interest to terminate his parental rights. We address these arguments in turn.

¶ 30 A. Fitness Finding

¶ 31 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*. The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.*

¶ 32 The trial court found respondent unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for DCFS taking the children into custody (750 ILCS 50/1(D)(m)(i) (West 2012)); (2) make reasonable progress toward the return home of the children during the initial nine-month period following adjudication (750 ILCS 50/1(D)(m)(ii) (West 2012)); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children (750 ILCS 50/1(D)(b) (West 2012)). We examine these grounds individually.

¶ 33 1. *Reasonable Efforts*

¶ 34 Defendant first asserts the trial court erred by finding he failed to make reasonable efforts to correct the conditions that formed the basis for DCFS taking the children into custody. See 750 ILCS 50/1(D)(m)(i) (West 2012). The State concedes the court's finding was against the manifest weight of the evidence, and we accept the State's concession.

¶ 35 " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal." *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). The trial court must focus on the amount of effort subjectively reasonable for the particular parent. *Id.* The court must determine whether a parent made reasonable efforts within the initial nine-month period following adjudication. *In re D.F.*, 208 Ill. 2d 223, 238, 802 N.E.2d 800, 809 (2003). That nine-month period begins on the date the court adjudicates the minor child neglected. *Id*.

¶ 36 In this case, the children were removed from respondent mother's care due to domestic violence between herself and a paramour. Respondent was not involved in that altercation; however, respondent mother reported a history of domestic abuse with respondent. Therefore, respondent was referred to domestic-violence counseling.

¶ 37 In September 2011, respondent began the Peace Program at Crosspoint Human Services, which he successfully completed in April 2012. The program provided domestic-violence counseling and was geared toward male abusers. He actively participated in the program and the coordinator believed respondent had learned from the program. By participating in and successfully completing this program, respondent demonstrated reasonable efforts toward correcting the conditions that caused the children to be brought into DCFS custody. He further reported a stable relationship with his paramour and caseworkers reported no signs of domestic violence. Finally, the trial court entered orders in March 2012 finding

respondent was making reasonable efforts to correct the conditions which led to the children's removal. Accordingly, the trial court's finding of unfitness as to this count was against the manifest weight of the evidence.

¶ 38 2. *Reasonable Progress*

¶ 39 Respondent next asserts the trial court erred by finding he failed to make reasonable progress toward the return home of the children during the initial nine-month period following adjudication. See 750 ILCS 50/1(D)(m)(ii) (West 2012). The State concedes the court's finding was against the manifest weight of the evidence, and we again accept the State's concession.

¶ 40 While "reasonable efforts" are judged under a subjective standard, "reasonable progress" is "an objective standard measured from the conditions existing at the time custody was taken from the parent." *In re A.S.*, 2014 IL App (3d) 140060, ¶ 17, 14 N.E.3d 26. To establish reasonable progress, the trial court must find some "measurable or demonstrable movement toward the goal of return of the child." *In re M.S.*, 210 Ill. App. 3d 1085, 1093, 569 N.E.2d 1282, 1287 (1991). In measuring the parent's progress, the court should consider "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). A parent demonstrates reasonable progress when the court finds it would be able to return the child to the parent's custody in the near future. *A.S.*, 2014 IL App (3d) 140060, ¶ 17, 14 N.E.3d 26. When the petition alleges a parent failed to make reasonable progress in the initial nine months following adjudication, the calculation of that period begins from the date the court enters the order finding

the children neglected. *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

¶ 41 During the initial nine-month period, the record demonstrates respondent made reasonable progress. First, the trial court entered orders in March 2012 specifically finding respondent had made reasonable progress. Second, during this time period, DCFS referred respondent to domestic-violence counseling, in which he actively participated. He complied with a substance-abuse assessment and submitted to drug screens. Nothing in the record indicates he tested positive for drugs or alcohol during the initial nine-month period. Respondent's various caseworkers testified he was cooperative with them and with services. By all reports, his visits with the children were proceeding well. Accordingly, the trial court's finding that respondent failed to make reasonable progress during the initial nine-month period was against the manifest weight of the evidence.

¶ 42 3. *Reasonable Interest, Concern, or Responsibility*

¶ 43 Defendant next contends the trial court erred by finding he failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the children. See 750 ILCS 50/1(D)(b) (West 2012). The State concedes the court's finding regarding respondent's reasonable degree of interest and concern is against the manifest weight of the evidence but asserts the finding regarding respondent's responsibility as to the welfare of the children is not. The State must only prove one of the three elements to satisfy this ground of unfitness. *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51, 19 N.E.3d 1273.

¶ 44 A parent's interest, concern, or responsibility toward his or her child must be objectively reasonable under the circumstances. *Id*. Courts have found "[n]oncompliance with an imposed service plan, a continued addiction to drugs, a repeated failure to obtain treatment for

an addiction, and infrequent or irregular visitation with the child" are sufficient to warrant a finding of unfitness under this subsection. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 45 As to respondent's reasonable interest and concern, the record demonstrates respondent had positive interactions with his children on a regular basis. He did not miss any visits, and nothing during those visits gave caseworkers cause for concern. Rather, the caseworkers characterized respondent's visits as proceeding well. Nothing in the record suggests respondent failed to maintain reasonable interest in and concern for the children. He also complied with the service plan and engaged in services as recommended, including domestic-violence counseling. Therefore, we accept the State's concession regarding these grounds.

¶ 46 The question then becomes whether the trial court's finding that respondent failed to maintain a reasonable degree of responsibility for the children was against the manifest weight of the evidence. The State's sole argument on appeal is that respondent failed to maintain a reasonable degree of responsibility because he was unemployed throughout the majority of the case. However, the State offers no legal authority to support this proposition.

¶ 47 The State contends the trial court was not required to believe respondent's testimony that he was actively seeking employment. See *In re D.L.*, 326 Ill. App. 3d 262, 269, 760 N.E.2d 542, 548 (2001) (the court's role is to determine the credibility of the witnesses). Though the court was not required to believe respondent's uncontradicted assertion that he was actively seeking work or completing odd jobs for extra money, nothing in the record indicates respondent's lack of employment led to his inability to provide meals, stable housing, or other necessities for the children. To the contrary, despite respondent's unemployment, DCFS, for a brief time, returned custody of the children to him. While unemployed, respondent engaged in

domestic-violence counseling and complied with the service plan, both of which demonstrate his responsibility toward the children. He attended all visits with the children with no reported problems. He also engaged in individual counseling to address his stress levels, even though that was not required by DCFS. Though respondent submitted two positive tests for alcohol, the caseworker acknowledged those levels were low and did not recommend any treatment as a result. Other than his unemployment, the State can point to no other evidence demonstrating respondent's lack of responsibility toward his children. Under these circumstances, the court's finding that respondent failed to maintain a reasonable degree of interest, concern, or responsibility was against the manifest weight of the evidence.

¶ 48 Accordingly, we conclude the trial court's fitness finding was against the manifest weight of the evidence.

¶ 49 B. Best-Interest Finding

¶ 50 Because we have determined the trial court erred in finding respondent unfit, we need not discuss whether the court's best-interest finding was in error.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we reverse the trial court's judgment.

¶ 53 Reversed.