2015 IL App (4th) 150092-U

FILED
July 1, 2015
Carla Bender
4th District Appellate
Court, IL

NOS. 4-15-0092, 4-15-0093, 4-15-0094 cons.

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-15-0092)	)	No. 11JA5
MICHAEL WILLIAMS,	)	
Respondent-Appellant.	)	
_____	)	
	)	No. 11JA6
In re: M.W., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0093)	)	
MICHAEL WILLIAMS,	)	
Respondent-Appellant.	)	
	)	
_____	)	
	)	No. 11JA7
In re: E.W., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0094)	)	Honorable
MICHAEL WILLIAMS,	)	Claudia S. Anderson,
Respondent-Appellant.	)	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 On September 25, 2014, the trial court found respondent, Michael Williams, to be an unfit parent. On February 5, 2015, the court terminated respondent's parental rights after

finding termination to be in K.W.'s (born August 21, 2002), M.W.'s (born August 29, 2007), and E.W.'s (born January 18, 2009) best interests. Respondent appeals, arguing the court erred in finding him unfit and in terminating his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 30, 2014, the State filed a petition to terminate respondent's parental rights, alleging he was unfit pursuant to section 1 of the Adoption Act (750 ILCS 50/1 (West 2012)) because he failed to demonstrate a reasonable degree of interest, concern, or responsibility for the children's welfare; deserted the minors for more than three months preceding the commencement of the termination action; failed to make reasonable efforts to correct the conditions that were the basis for the children's removal within 9 months after the adjudication of neglect, abuse, or dependency (February 25, 2011, to November 25, 2011); failed to make reasonable progress toward the children's return within 9 months after the adjudication of neglect, abuse, or dependency (February 25, 2011, to November 25, 2011); and failed to make reasonable progress toward the children's return during any nine-month period after the end of the initial nine-month period following adjudication of neglect, specifically November 25, 2011, to August 25, 2012; and August 25, 2012, to May 25, 2013.

¶ 5 On September 17, 2014, the trial court held a hearing on the State's petition to terminate. Patricia Bratton testified she was respondent's caseworker at Lutheran Social Services (Lutheran) from August 25, 2011, until late June 2012. When the children came into care, K.W. was eight, M.W. was three, and E.W. was two years old. The children came into care because of domestic violence coupled with substance abuse. K.W. was very adamant in the beginning of the case she did not ever want to live with respondent because of physical abuse. During the

course of Bratton's work on the case, K.W. enjoyed visits with her father but never expressed a desire to live with him.

¶ 6 Bratton testified respondent was incarcerated at Dixon Springs boot camp for the first 10 months after the children were adjudicated neglected. Respondent completed 99 hours of substance-abuse treatment there.

¶ 7 Bratton authored her first service plan in this case on October 11, 2011. Respondent was released from prison on December 13, 2011. After respondent's release from prison, he had appropriate visits with the children.

¶ 8 Respondent completed a substance-abuse assessment on January 10, 2012, but he did not meet the criteria for treatment. His drug tests during this period were negative and non-diluted. Respondent completed a family-life-skills assessment on January 24, 2012, and began classes on January 31, 2012. As of March 30, 2012, respondent had complied with the class rules and had completed his homework assignments. He was showing a change to some of his negative attitudes. As of April 30, 2012, respondent continued to do well in the family-life-skills class. His parenting classes were tied in with the family-life-skills classes, and he reportedly was doing well. Bratton testified respondent successfully completed his classes on family life skills for domestic violence and parenting on May 29, 2012. According to Bratton, respondent was found to have made reasonable efforts and progress during the entire time she was assigned to his case.

¶ 9 Bill Fraley testified he was a counselor for Trisha Brown, the mother of M.W. and E.W., and respondent at Lutheran . Fraley first met with respondent in June 2012, after he was released from prison or jail. After meeting with respondent from June 2012 until October 2012 on anger-management issues, respondent was unsuccessfully discharged for continued absences

and chronic missed appointments. Fraley testified respondent was rereferred for services in February 2013 and was again unsuccessfully discharged in August 2013 for nonattendance.

¶ 10 Fraley testified M.W. has special needs because of sexual-perpetration behaviors he displayed in a foster home. M.W. would need to be monitored and would not be able to share a bedroom with his younger brother. Close supervision would be needed to prevent M.W. from victimizing his younger brother if the children were placed together.

¶ 11 Kris Zogg testified she was assigned to this case from October 2012 until March 2013, while working as a child-welfare specialist at Lutheran. At that time, respondent had successfully completed all services prior to her working on the case. (However, as noted above, respondent was discharged unsuccessfully from counseling with Fraley.) She was in contact with him two to four times a month. Respondent interacted with the children in a loving manner and displayed appropriate discipline, and he attended 32 of 38 offered visits.

¶ 12 Respondent was living in his mother's four-bedroom home. Six adults, two teenagers, and a baby were living in the home at the time. Zogg told respondent he needed to find appropriate housing before the children would be returned. Although he was trying to find a different home, he did not move while she was assigned his case. According to Zogg, respondent was ready for reunification, but the children were not.

¶ 13 Respondent was self-employed, working part-time as a flooring installer while Zogg was assigned to this case. Zogg told respondent he needed a full-time job to be able to support his children. She did not recall respondent ever indicating he was seeking better employment.

¶ 14 Brittany Lutz testified she was respondent's caseworker from March 2013 until May 2014. According to Lutz, respondent and Brown obtained appropriate housing for the

children's return. However, respondent began having unsuccessful drug drops. He missed a test on May 24, 2013, and tested positive for heroin on June 20, 2013. Respondent regularly attended visits with the children. However, he missed a few visits because of work. Although he raised his voice a few times, Lutz testified respondent was good with the children during visits.

¶ 15 On September 26, 2013, respondent tested positive for heroin, cocaine, opiates and benzodiazepines. On November 12, 2013, he tested positive for opiates. On January 30, 2014, and February 3, 2014, he tested positive for both opiates and benzodiazepines. He stopped attending counseling after August 25, 2013. He also had no visitation with the children after October 1, 2013, because he was not providing drug drops. Lutz had little contact with respondent after December 26, 2013, and he was not engaged in any services between December 26, 2013, and May 7, 2014.

¶ 16 The State called respondent, who testified he was currently incarcerated at the Public Safety Building in Danville on a Class 4 possession of a controlled substance charge. He had been arrested on May 1, 2014. Respondent chose not to testify on his own behalf.

¶ 17 On September 25, 2014, the trial court entered a written order finding respondent unfit based on each of the State's allegations.

¶ 18 At a best-interests hearing in January 2015, Rachel Kramer, program director for Lutheran, testified K.W. was residing in a traditional foster placement in Champaign, and M.W. and E.W. were in a traditional foster placement in Danville. Kramer testified these were permanent placements.

¶ 19 K.W. was in a one-parent foster home and lived with one other foster child and one or two of the foster parent's biological children. Kramer testified K.W. seemed to get along with both the foster parent and the other children in the home. K.W. was displaying typical

preteen behavior, not always wanting to listen or follow directions. However, K.W. had been working on this. Kramer had no reservations about this placement becoming permanent.

¶ 20 Kramer acknowledged K.W.'s foster parent had recently expressed serious concerns and frustrations with K.W. In an effort to save the placement, K.W. was in individual therapy through Lutheran and had been assessed by ABC Counseling for some sexualized behaviors. In addition, attempts were being made to implement a plan where the foster parent would receive four days of respite per month. Kramer testified K.W. had been making progress at school. Kramer attended a meeting at the school and the staff present were impressed with how well K.W. was adjusting to the school. While acknowledging the challenges K.W. could create, Kramer still believed the foster parent was up to the challenge and able to meet K.W.'s needs.

¶ 21 With regard to M.W. and E.W., Kramer testified they were doing very well in their long-term foster home. The foster parents stated they were willing to adopt the children. Kramer had been told by caseworkers the boys and the foster parents interacted very well. Kramer testified she had no reservations about the children remaining at this placement as a permanent residence. Kramer testified the boys also appeared to be doing well in school.

¶ 22 Respondent testified he currently was incarcerated in the Department of Corrections at Vandalia. His release date is November 1, 2015, but he could potentially be released as early as the spring. Respondent testified he still wanted to be the children's father and raise them. However, he stated he was comfortable with the boys' foster placement. He was more concerned about the stability of K.W.'s placement. According to respondent, K.W. could live with his sister or the mother of two of his other children. Respondent testified he was able to

provide for the children financially when he was not incarcerated through his flooring-installation work.

¶ 23 The trial court found it was in the children's best interests to terminate respondent's parental rights.

¶ 24 This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 A. Unfitness Finding

¶ 27 Before a trial court can terminate parental rights, the State must prove by clear and convincing evidence (*In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001)) the parent is unfit as defined by the Adoption Act (750 ILCS 50/0.01 to 24 (West 2012)) (*In re B.B.*, 386 Ill. App. 3d 686, 698, 899 N.E.2d 469, 480 (2008)). A reviewing court will reverse a trial court's finding of unfitness only when it is against the manifest weight of the evidence. *In re D.F.*, 201 Ill. 2d 476, 495, 777 N.E.2d 930, 940-41 (2002). A decision is against the manifest weight of the evidence only where the opposite result is clearly evident or where the determination is unreasonably arbitrary and not based on the evidence presented. *In re Cornica J.*, 351 Ill. App. 3d 557, 566, 814 N.E.2d 618, 626 (2004).

¶ 28 An individual's parental rights can 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). In this case, the trial court found the State proved defendant was unfit based on all of the State's allegations.

¶ 29 We examine the trial court's finding respondent was unfit because he failed to demonstrate a reasonable degree of interest, concern, or responsibility for the children's welfare. Before finding a parent unfit on this ground, the court must "examine the parent's conduct

concerning the child in the context of the circumstances in which that conduct occurred." *In re Adoption of Syck*, 138 Ill. 2d 255, 278, 562 N.E.2d 174, 185 (1990). Circumstances to consider may include the parent's difficulty in obtaining transportation to the child's residence, the parent's poverty, the actions or statements of others hindering or discouraging visitation, "and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child." *Syck*, 138 Ill. 2d at 279, 562 N.E.2d at 185. The parent may be found unfit for failing to maintain either interest, concern, or responsibility; proof of all three is not required. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 124-25 (2004).

¶ 30 In this case, respondent spent a majority of 2011 in prison. After his release, he initially engaged in services and visits with his children. However, in October 2012, respondent was unsuccessfully discharged from anger-management counseling after continued absences and missed appointments. In August 2013, he stopped attending family counseling and his case was closed. In September 2013, he tested positive for heroin, cocaine, opiates, and benzodiazepines. In November 2013, he tested positive for opiates. In January and February 2014, respondent tested positive for both opiates and benzodiazepines. Finally, after October 1, 2013, respondent did not have any visits with his children. On December 26, 2013, after the permanency goal for the children was changed, respondent no longer participated in any services. In May 2014, he was arrested and charged with possession of a controlled substance, a Class 4 felony.

¶ 31 Respondent's behavior after August 2013, over 2½ years after the children were adjudicated neglected because of his substance abuse, showed he was more concerned and interested in drugs than the welfare of his children. He failed to testify and contradict the State's clear and convincing evidence or justify his actions based on his circumstances at the time. The

trial court's finding respondent was unfit because he failed to demonstrate a reasonable degree of interest or concern for the children's welfare was not against the manifest weight of the evidence.

¶ 32 B. Best-Interests Hearing

¶ 33 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interests of the child to terminate parental rights. *D.F.*, 201 Ill. 2d at 494-95, 777 N.E.2d at 940. The trial court conducts the best-interests hearing using a preponderance of the evidence standard of proof. *In re D. T.*, 212 Ill. 2d 347, 367, 818 N.E.2d 1214, 1228 (2004). When considering whether termination of parental rights is in a child's best interests, 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." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 34 "A trial court's finding termination is in the children's best interests will not be reversed unless it is contrary to the manifest weight of the evidence." *In re M.F.*, 326 Ill. App. 3d 1110, 1115-16, 762 N.E.2d 701, 706 (2002). Under this standard, a reviewing court gives the trial court deference because it is in a better position to observe the parties' and witnesses' conduct and demeanors. *M.H.*, 196 Ill. 2d at 361, 751 N.E.2d at 1139. We will not substitute our judgment for that of the trial court regarding witness credibility, the weight to be given witness testimony, or inferences to be drawn from the evidence presented. *People v. Deleon*, 227 Ill. 2d 322, 332, 882 N.E.2d 999, 1005 (2008). 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.

¶ 35 This case has been ongoing since January 2011. Respondent had not seen the children since October 1, 2013. M.W. and E.W. have been in the same foster home for an extended period and the foster parents stated they were willing to adopt the boys. While K.W.'s situation was not as ideal as her younger brothers, K.W. seemed to get along with both her foster parent and the other children in the foster home. Although K.W. displayed typical preteen behavior, *i.e.*, not always listening or following directions, K.W. had been working on these issues. She had also been making progress at school. Further, even though the foster parent had expressed some serious concerns and frustrations with K.W., the social workers were working with the foster parent and K.W., and Kramer believed this could be a permanent placement for K.W.

¶ 36 Considering this case has been ongoing since January 2011 and respondent had reverted to the same behavior for which the children had been adjudicated neglected, we cannot find the trial court's decision to terminate his parental rights was against the manifest weight of

the evidence. The children deserve a chance at permanence. Based on the record in this case, the facts do not clearly demonstrate the trial court should have reached the opposite result.

¶ 37 III. CONCLUSION

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

¶ 39 Affirmed.