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2015 IL App (4th) 150140-U

NO. 4-15-0140

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
June 30, 2015
Carla Bender
4th District Appellate
Court, IL

| | | |
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| In re: K.R., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Champaign County |
| v. | ) | No. 13JA46 |
| CAMERON MAY, | ) | |
| Respondent-Appellant. | ) | Honorable |
| | ) | Richard P. Klaus, |
| | ) | Judge Presiding. |

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

**ORDER**

¶ 1 *Held*: The trial court did not make findings that were against the manifest weight of the evidence by finding that (1) respondent was an "unfit person" because of his repeated incarcerations (750 ILCS 50/1(D)(s) (West 2014)) and (2) it would be in the child's best interest to terminate his parental rights.

¶ 2 Respondent, Cameron May, appeals from an order terminating his parental rights to K.R., born April 8, 2007. He challenges the trial court's finding that he was an "unfit person" as well as the finding that it was in K.R.'s best interest to terminate his parental rights. Because neither of those findings is against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. Shelter Care

¶ 5 On September 11, 2013, in a shelter care hearing, the trial court found probable cause to believe that K.R. was neglected, and the court awarded temporary custody of her to the guardianship administrator of the Illinois Department of Children and Family Services (DCFS). According to the "Temporary Custody and Admonition Order," the court based its probable-cause finding on the following facts: "The respondent father has stipulated to temporary custody in open court. The respondent father fled from Urbana police in a vehicle with the child in the vehicle unrestrained."

¶ 6 B. The Adjudication of Neglect

¶ 7 On October 29, 2013, in an adjudicatory hearing, respondent stipulated to count II of the State's petition for an adjudication of neglect. That count alleged that K.R. was neglected within the meaning of section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)) in that when residing with respondent, she was in an environment injurious to her welfare. Her environment allegedly was injurious in that it "expose[d] [her] to criminal activity." The trial court accepted the stipulation and found K.R. to be neglected.

¶ 8 C. The Dispositional Order

¶ 9 On November 27, 2013, in a dispositional hearing, the trial court adjudged K.R. to be a neglected minor, removed custody and guardianship of her from respondent, and awarded custody and guardianship to the guardianship administrator of DCFS. The dispositional order stated:

> "It is in the best interest of the minor and the public that the minor be made a ward of the Court and adjudged neglected.
>
> The respondent father, Cameron May, is unfit and unable for reasons other than financial circumstances alone, to care for,

> protect, train or discipline the minor and the health, safety and best interest of the minor will be jeopardized if the minor remains in the custody of such parent. The Court adopts and incorporates herein its findings rendered orally and in writing at all prior hearings including the temporary custody and adjudicatory hearing. The Court further finds that respondent father was sentenced to four years and six months in [the Illinois Department of Corrections] for a Class 1 drug felony. His projected parole date is 11/1/15."

¶ 10 Respondent informs us that the felony was "manufacturing Ecstasy" (methylenedioxymethamphetamine).

¶ 11 D. The Petition for Termination of Parental Rights

¶ 12 On September 3, 2014, the State filed a petition to terminate respondent's parental rights to K.R. The petition had four counts.

¶ 13 Count I alleged that respondent was an "unfit person" within the meaning of section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)) in that, within nine months after the adjudication of neglect, he failed to make reasonable efforts to correct the conditions that were the basis for removing the minor from him.

¶ 14 Count II alleged that respondent was an "unfit person" within the meaning of section 1(D)(m)(ii) (750 ILCS 50/1(D)(m)(ii) (West 2014)) in that, within nine months after the adjudication of neglect, he failed to make reasonable progress toward the return of the minor.

¶ 15 Count III alleged that respondent was an "unfit person" within the meaning of section 1(D)(b) (750 ILCS 50/1(D)(b) (West 2014)) in that he had failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare.

¶ 16 Count IV alleged that respondent was an "unfit person" within the meaning of section 1(D)(s) (750 ILCS 50/1(D)(s) (West 2014)) in that he was incarcerated at the time the petition for termination of parental rights was filed, he had repeatedly been incarcerated as a result of criminal convictions, and his repeated incarceration had prevented him from discharging his parental responsibilities to the minor.

¶ 17 D. The Unfit-Person Hearing

¶ 18 On November 12, 2014, and January 9, 2015, the trial court held a hearing on the issue of whether respondent was an "unfit person" as alleged in the petition for the termination of parental rights.

¶ 19 1. *Judicial Notice of Repeated Incarceration*

¶ 20 In addition to hearing testimony, the trial court took judicial notice of the docket sheets in People v. Cameron, Champaign County case No. 10-CF-1897, and People v. Cameron, Champaign County case No. 13-CF-1031. These docket sheets showed the following. On December 7, 2010, in Champaign County case No. 10-CF-1897, defendant pleaded guilty to aggravated unlawful use of a weapon (720 ILCS 5/24-1.6(a)(3)(I) (West 2010)), for which the court sentenced him to imprisonment for three years. On October 18, 2013, in Champaign County case No. 13-CF-1031, defendant pleaded guilty to manufacturing no less than 5 grams and no more than 15 grams of ecstasy (720 ILCS 570/401(c)(7.5)(i) (West 2012)), for which the court sentenced him to 4 1/2 years' imprisonment, with credit for 77 days.

¶ 21 2. *Testimony*

¶ 22 Arnetha Truss, a child welfare specialist with DCFS, testified that during the entire time she was the caseworker, September 2013 to December 2013, respondent was incarcerated. Likewise, Allison Bugger, a child welfare specialist with Lutheran Social Services,

testified that since January 2014, when she became the caseworker, respondent had been incarcerated. Respondent took the stand in his own behalf and testified his current residence was Danville Correctional Center and that his expected date of release was July 27, 2015.

¶ 23 Respondent further testified that on August 18 and 19, 2014, while in prison, he took a two-day parenting seminar. Also, while in prison, he took college courses in philosophy, ethics, life science, and technical mathematics, and he took some vocational courses in construction and custodial maintenance. He would have taken a substance-abuse class, but the prison had not yet offered one.

¶ 24 It was at his own request that he had been transferred from Stateville Correctional Center to Danville Correctional Center, to make visitation and the "writ process" "more convenient."

¶ 25 After hearing the evidence and the arguments, the trial court found, by clear and convincing evidence, that respondent was "an unfit person and parent within the meaning of the Adoption Act."

¶ 26 E. The Best-Interest Hearing

¶ 27 On February 19, 2015, the trial court held a hearing on the issue of whether it would be in K.R.'s best interest to terminate respondent's parental rights. At the beginning of the hearing, the court stated it had read a report by Lutheran Social Services.

¶ 28 This best-interest report is in the record. It is dated February 19, 2015, and is signed by two employees of Lutheran Social Services: a child welfare specialist, Alexandria Thome, and a child welfare supervisor, Mallory Fiedler.

¶ 29 According to the best-interest report, K.R.'s mother is Katia Ross, whose parental rights were terminated on December 10, 2008, in Vermilion County case No. 07-JA-32. The

report stated that K.R., age 7, was in the foster care of a relative, Cynthia Pelmore. In Pelmore's house, K.R. had a room of her own. She was attending second grade and was "successfully closed out of individual counseling."

¶ 30 The report observed that respondent, who was imprisoned and who had "an extensive criminal history and multiple incarcerations," evidently loved his daughter and cared about her, judging by the books and letters he had sent her, but he was "unable to provide [her] a safe and stable living environment," and therefore the report recommended the termination of his parental rights.

¶ 31 The report continued:

> "[K.R.] is a very well-adjusted child that enjoys living with her foster mother Cynthia Pelmore and Cynthia's daughter Essence. She is doing well in school and has lots of friends. She is up-to-date on all of her medical, dental, and vision exams and is a very healthy girl. [K.R.] is very bonded to Cynthia and Essence 'Essie.' She has completed counseling successfully and there are no concerns for her at this time.
>
> It is in [K.R.'s] best interest to remain in the care of Cynthia Pelmore and to be adopted by her. [K.R.] is very happy and comfortable in this home. [K.R.] is able to express her needs to her foster mother and 'Essie' without any concerns. Due to [respondent's] amount of time in jail, permanency with him has not been possible and is not foreseeable in the near future. [K.R.]

would benefit from the stability that permanency would bring her in the foster home."

¶ 32 In addition to reading this best-interest report, the trial court heard the testimony of respondent and Killie Jo May, his mother. Respondent testified he expected to be released from prison sometime before June 2015 and that he loved his daughter and was prepared to take care of her. His attorney asked him:

"Q. Do you have plans for your release?

A. Yes.

Q. Do you have a place to live when you get out?

A. Yes.

Q. And do you have a job lined up when you get out?

A. Yes, I do."

¶ 33 Killie Jo May testified she had observed K.R. and respondent when they were together and that she had seen the bond between them. Respondent's attorney asked her:

"Q. How does he interact with his daughter?

A. He is—she is very responsive to whatever [he] has her do or whatever. He—she's very obedient to [him], very close to [him]. He's—he's a wonderful dad to [her.] He's made bad choices but I mean so have I and overall his relationship with [her] is great.

Q. Have you been able to see any changes in your son since he's been incarcerated?

> A. I have. He's—he's more positive. He's thinking about his future and how he wants to be a productive citizen rather than commit acts of injustice. He—he's just making plans, and [K.R.] is every part of it."

¶ 34 The trial court found it would be in K.R.'s best interest to terminate respondent's parental rights, and the court did so.

¶ 35 This appeal followed.

¶ 36 II. ANALYSIS

¶ 37 A. The Issue of Whether Respondent Was an "Unfit Person"

¶ 38 When, on appeal, a parent challenges a finding that he or she is an "unfit person," we ask whether the finding is against the manifest weight of the evidence. *In re E.O.*, 311 Ill. App. 3d 720, 726 (2000). Respondent argues that because few or no services were available in jail and prison, and because DCFS failed to make reasonable efforts to provide him services, and because he honestly tried to better himself while incarcerated, the trial court made a finding that was against the manifest weight of the evidence when finding he was an "unfit person." He says:

> "Nor was [respondent] complicit. He demonstrated initiative in taking advantage of opportunities that were available to him—college courses, a 2-day parenting seminar, a construction course, a janitorial course. [Citation.] He also attempted to stay in touch with the caseworker and showed his interest in K.R. by asking the [Illinois Department of Corrections] to transfer him from Joliet to Danville, so he could be nearer to her. [Citation.]

> Ultimately, the circuit court found [respondent] to be unfit, yet the very concept of a service plan implies the necessity of reasonable effort by DCFS. Here, the department's efforts were not only not reasonable but also practically non-existent. Consequently, the court's findings to the contrary and its ultimate finding of unfitness must be reversed as being against the manifest weight of the evidence."

¶ 39 Respondent does not specify what else he expected DCFS to do. In any event, reasonable efforts and reasonable progress are irrelevant if a parent is unfit on the ground of repeated incarceration. See 750 ILCS 50/1(D)(s) (West 2014). "A finding of unfitness under subsection (s) is warranted where repeated incarceration has prevented the parent from providing his or her child with the necessary emotional and financial support and stability required of a parent. [Citation.] Subsection (s) may be utilized regardless of the parent's efforts, interest in his child, or satisfactory attainment of goals. [Citation.]" *In re Andrea D.*, 342 Ill. App. 3d 233, 246-47 (2003).

¶ 40 In his brief, respondent does not specifically challenge the finding that because of repeated incarceration, he was an "unfit person" under section 1(D)(s) of the Adoption Act (750 ILCS 50/1(D)(s) (West 2014)). Conformance to only one of the statutory grounds in section 1(D) (750 ILCS 50/1(D) (West 2014)) is enough to make someone an "unfit person." *E.O.*, 311 Ill. App. 3d at 726. Granted, the trial court did not say which counts of the State's petition it found to be proved by clear and convincing evidence. But "the general finding of unfitness *** is sufficient to sustain the judgment herein, where the petition alleges [the respondent's] unfitness, the specific grounds therefor are set forth with particularity, and the evidence in the

record clearly and convincingly supports the judgment." *In re Grotti*, 86 Ill. App. 3d 522, 531-32 (1980).

¶ 41 The evidence supports a finding that respondent was an "unfit person" because of repeated incarceration. See 750 ILCS 50/1(D)(s) (West 2014). We need not consider any of the other alleged grounds of unfitness. *E.O.*, 311 Ill. App. 3d at 726. Respondent has been imprisoned for most of K.R.'s life, and while in prison, he could not "provid[e] his *** child with the necessary emotional and financial support and stability required of a parent." *Andrea D.*, 342 Ill. App. 3d at 247.

¶ 42 B. The Issue of Whether It Was in K.R.'s Best Interest To Terminate Respondent's Parental Rights

¶ 43 Respondent also challenges the trial court's finding that it was in K.R.'s best interest to terminate his parental rights. We likewise ask whether this finding is against the manifest weight of the evidence. See *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005).

¶ 44 Respondent argues:

> "Here, [respondent's] release from prison was imminent, as of the conclusion of these proceedings in the trial court. [Citation.] By his own account, as corroborated by both Ms. Bugger and Ms. Truss [citation], [respondent] cares for K.R. and has sought to minimize the effects of [h]is incarceration on her and on his relationship with her. For reasons previously noted, above, however, he has not had the benefit of any services intended to promote reunification. Given K.R.'s age, her interest in seeing her father again, his interest in regaining custody, and the statutory factors set forth in Section 1-3(4.05) [(705 ILCS 405/1-3(4.05)

(West 2014))], it was against the manifest weight of the evidence to find it to be in K.R.'s best interest to terminate her father's parental rights."

¶ 45 We have no doubt that respondent cares about K.R.—and having a caring parent is important to a child. See 705 ILCS 405/1-3(4.05)(d) (West 2014). But this caring attitude must express itself in practical ways, by providing a safe and stable home for the child—with the parent present in the home. See 705 ILCS 405/1-3(4.05)(a), (d), (g) (West 2014). Pelmore has a history of doing that, whereas respondent, because of his repeated incarcerations, has a history of not doing that. Therefore, we do not agree that the trial court made a finding that was against the manifest weight of the evidence when finding it would be in K.R.'s best interest to terminate respondent's parental rights so as to enable Pelmore to adopt her.

¶ 46 III. CONCLUSION

¶ 47 For the foregoing reasons, we affirm the trial court's judgment.

¶ 48 Affirmed.