2015 IL App (4th) 150155-U

NOS. 4-15-0155, 4-15-0156 cons.

FILED
June 16, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.B., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Adams County
v. (No. 4-15-0155)	)	No. 11JA14
MEGAN BLEVINS,	)	
Respondent-Appellant.	)	
	)	
In re: C.B., a Minor,	)	No. 11JA40
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0156)	)	
MEGAN BLEVINS,	)	Honorable
Respondent-Appellant.	)	John C. Wooleyhan,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the trial court's decision terminating respondent's parental rights.

¶ 2 In March and August 2011, the State filed petitions for adjudication of wardship with respect to S.B. and C.B., the minor children of respondent, Megan Blevins. In October 2011, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In January 2014, the State filed a motion to terminate respondent's parental rights. In February 2015, the court found respondent unfit and also found it in the minors' best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit, (2) allowing the State to present certain evidence, and (3) finding it in the minors' best interest that her parental rights be terminated. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2011, the State filed a petition for adjudication of wardship (case No. 11JA14) with respect to S.B., born in May 2010, the minor child of respondent and Brantley Blevins. The petition alleged Blevins "hit, kicked and choked" respondent in their residence in July 2007 while respondent's son, D.G., was present. In November 2007, Blevins stabbed respondent nine times, "eight times in the back and once on the arm," while D.G. was in close proximity. Blevins acknowledged drinking heavily, being an alcoholic, and not remembering anything from the incident. He pleaded guilty to aggravated domestic battery and was sentenced to five years in prison. Upon his release from prison, he violated his parole by having contact with respondent and returned to prison. In October 2009, DCFS received a report indicating Blevins was living with respondent and D.G., even though he was to have no contact with them. Respondent was indicated for substantial risk of physical injury and injurious environment to the minor's health and welfare. In September 2010, DCFS received a report indicating respondent had continued her relationship with Blevins despite the fact that he failed to follow through with recommended substance-abuse counseling. Because of the history of domestic violence, the acknowledgement of the incidents occurring after Blevins had been drinking alcohol, and his failure to follow through with additional counseling, the petition alleged S.B. was neglected and/or abused based on the risk of harm. In June 2011, the trial court entered a temporary custody order, finding probable cause to believe S.B. was neglected or abused.

¶ 6 In August 2011, the State filed a petition for adjudication of wardship (case No.

11JA40) with respect to C.B., born in August 2011, the minor child of respondent and Blevins. The petition alleged C.B. was neglected due to an injurious environment. In September 2011, the court entered a temporary custody order, finding probable cause to believe C.B. was neglected. Thereafter, the cases were consolidated.

¶ 7 In its October 2011 dispositional order, the trial court found respondent and Blevins unfit and unable, for reasons other than financial circumstances alone, to care for, protect, train, or discipline S.B. and C.B. and the health, safety, and best interest of the minors would be jeopardized if they remained in their custody. The court adjudged the minors neglected and abused, made them wards of the court, and placed custody and guardianship with DCFS.

¶ 8 In January 2014, the State filed a motion to terminate the parental rights of respondent and Blevins. The motion alleged respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the minors' removal (750 ILCS 50/1(D)(m)(i) (West 2012)), (2) make reasonable progress toward the return of the minors within the initial nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)), and (3) make reasonable progress toward the return of the minors in any nine-month period after the end of the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(iii) (West 2012)).

¶ 9 The State listed the first nine-month period as being September 14, 2011, to June 13, 2012. The second nine-month period went from June 14, 2012, to March 13, 2013; the third nine-month period went from March 14, 2013, to December 13, 2013; and the fourth nine-month period went from December 14, 2013, to September 13, 2014.

¶ 10 In November 2014, the trial court conducted the unfitness hearing. Laura Dagg, a child-welfare specialist, testified she was assigned to the case involving S.B. and C.B. in July

2013. In 2011, a service plan had been created for respondent, setting forth tasks relating to cooperation, domestic violence, mental health, parenting, and visitation. Dagg stated respondent was rated unsatisfactory as to the domestic-violence task because she had not begun services. She rated satisfactory on the tasks of cooperation and visitation.

¶ 11 In June 2012, an additional service plan was created with similar tasks. Respondent again rated unsatisfactory as to the domestic-violence task because she was hesitant to engage in services and did not want to sign a release of information. She rated satisfactory as to visitation and mental health.

¶ 12 Dagg stated she met with respondent and Blevins when she was assigned the case. At that time, respondent had an order of protection against Blevins. The children resided with respondent, and Blevins was not allowed in the house. In December 2013, a new service plan included tasks involving domestic violence, mental health, cooperation, and parenting. Dagg stated respondent rated unsatisfactory as to the cooperation task because she was only present for scheduled home visits, she missed appointments without calling to cancel or reschedule, and violated the order of protection by allowing Blevins to have contact with the minors. She rated unsatisfactory on the parenting task based on allowing Blevins to have contact with the minors. She rated unsatisfactory on the domestic-violence task because there had been another incident of domestic violence and she had been unwilling to follow through with what she needed to do to protect herself and her children. Respondent rated unsatisfactory on the mental-health task as she had made no progress in therapy.

¶ 13 Dagg stated she created another service plan in June 2014. Respondent rated unsatisfactory as to the cooperation task because she was not available for unannounced visits and had not seen her therapist since April 2014. She rated unsatisfactory as to the tasks

involving mental health and domestic violence because she quit seeing her therapist and never provided documentation that she was participating in services. Respondent rated unsatisfactory on the visitation task because she yelled at the children and attempted to manipulate the visits to allow Blevins to have contact with them.

¶ 14 Kathy Saunders, a therapist, testified she worked with respondent in 2012 to help her understand domestic violence, codependent relationships, coping with anxiety, and relation-management skills. Saunders successfully discharged respondent in June 2013. Within a month of the discharge, a domestic-violence incident occurred and Saunders sought to provide additional support. Respondent resumed counseling sessions and worked on the domestic-violence aspect of her relationship with Blevins. Respondent indicated her hope to reunite her family. Respondent did not feel Blevins was a threat to her or her children and she wanted to support him in dealing with his alcohol-related issues.

¶ 15 Respondent testified she has consistently advised her caseworkers regarding her addresses. She stated she had completed her domestic-violence task in early June 2013 but later had a confrontation with Blevins. She was told to get an order of protection, which she did. She stated she also signed all necessary releases.

¶ 16 On cross-examination, respondent stated the June 2013 incident with Blevins involved her being pulled out of the car. Blevins kept her phone from her and she "got head-butted on the side of the head." Blevins was arrested, and respondent sought an order of protection. Less than a week later, she asked that the order of protection be modified so Blevins could go to treatment and she could take part in family counseling as part of that treatment. Respondent stated the children were removed in October 2013, and Blevins moved back in about a month later.

¶ 17 The trial court continued the hearing until February 2015. In January 2015, the State added the fifth nine-month period from September 14, 2014, to June 13, 2015. Respondent testified there was an incident of domestic violence in December 2014. The only thing respondent remembered was waking up on the floor. She stated she had a cut above her eye and a stab wound on her back. Blevins was the only person in the house with her. Respondent stated Blevins choked her until she passed out. Respondent also stated Blevins is serving 13 years in prison.

¶ 18 Following arguments, the trial court found respondent unfit, stating she failed to make reasonable efforts to correct the conditions that were the basis for the minors' removal from her. The court stated "[w]e're in the same situation now as we were at the time of disposition in October of 2011, which would be over three years ago." The court stated the unfitness findings related to the nine-month periods alleged by the State as well as the amended nine-month period. The court also found Blevins unfit. The court then proceeded to the best-interest hearing.

¶ 19 Dagg testified the minors were living with their foster parents and were "very bonded" with them. The foster parents were willing to adopt the minors. Respondent testified the minors had been out of her custody since October 2013. She stated the visits with her children "go great" and they always call her "mom."

¶ 20 Following arguments, the trial court found it in the minors' best interest that respondent's parental rights be terminated. The court also terminated the parental rights of Blevins. This appeal followed.

¶ 21 II. ANALYSIS

¶ 22 A. Unfitness Findings

¶ 23 Respondent argues the trial court erred in finding her unfit due to a failure to

make reasonable efforts to correct the conditions that were the basis of the removal of the minors. The State argues respondent failed to make reasonable progress toward the return of her children.

¶ 24 In a proceeding to terminate a respondent's parental rights, the State must prove unfitness by clear and convincing evidence. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). " 'A determination of parental unfitness involves factual findings and credibility assessments that the trial court is in the best position to make.' " *In re Richard H.*, 376 Ill. App. 3d 162, 165, 875 N.E.2d 1198, 1201 (2007) (quoting *In re Tiffany M.*, 353 Ill. App. 3d 883, 889-90, 819 N.E.2d 813, 819 (2004)). A reviewing court accords great deference to a trial court's finding of parental unfitness, and such a finding will not be disturbed on appeal unless it is against the manifest weight of the evidence. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 40, 969 N.E.2d 877. "A decision regarding parental fitness is against the manifest weight of the evidence where the opposite conclusion is clearly the proper result." *In re D.D.*, 196 Ill. 2d 405, 417, 752 N.E.2d 1112, 1119 (2001).

¶ 25 Initially, we note it is not clear whether the trial court found respondent unfit on just the reasonable-efforts ground or that one and the reasonable-progress grounds. Respondent only makes an argument regarding reasonable efforts. The State's only argument on the issue of unfitness involves reasonable progress. At the fitness hearing, the court noted the State had alleged three grounds of unfitness. During its ruling, the court found respondent made "some progress" during the various nine-month periods, noting there was "progress at some time regression in other times." The court concluded as follows:

> "Based upon all that evidence, the Court is going to find today that the People have shown by clear and convincing

> evidence that as to each of the parents the allegation alleging that the parents have failed to make reasonable efforts to correct the conditions which was the basis for the removal of the children has been proven as to each parent. We're in the same situation now as we were at the time of disposition in October of 2011, which would be over three years ago. In some ways we're not as far along now as we were then because this has been going on for such a long period of time.
>
> The Court's going to make that finding of unfitness as being proven as to each of the parents and that that finding also relates to the nine-month periods that are alleged by the People, the amended nine-month periods which alleged by the People as a part of the Motion For Termination.
>
> So, with those findings of unfitness having been made, the next issue the Court is required to consider is the best interests of the minors."

The court did not state it was ruling in respondent's favor on the reasonable-progress allegations. In its written order, the court marked respondent unfit under the single ground containing both the reasonable-efforts allegation and the reasonable-progress allegations.

¶ 26 In the future, we urge the trial court to clearly state whether it is finding a respondent unfit on all of the allegations brought by the State. The reason such clarity is necessary is because, if the court did find respondent unfit on the three grounds of unfitness, as the written order states, respondent's failure to argue the reasonable-progress grounds on appeal

would result in forfeiture of the issue. See *In re D.L.*, 191 Ill. 2d 1, 8, 727 N.E.2d 990, 993 (2000) (stating the respondent's failure to challenge all grounds of unfitness rendered the appeal moot); *In re D.L.*, 326 Ill. App. 3d 262, 268, 760 N.E.2d 542, 547 (2001) (stating the respondent's failure to set forth an argument on all grounds of unfitness conceded unfitness on the unchallenged grounds). Because it is clear the court found respondent unfit under the reasonable-efforts ground, and respondent makes an argument on that ground, we will address whether respondent exhibited reasonable efforts.

¶ 27 Section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West Supp. 2013)) defines a parent as being unfit for failing "to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor." " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal. [Citation.] The focus is on the amount of effort reasonable for the particular parent involved." *In re R.L.*, 352 Ill. App. 3d 985, 998, 817 N.E.2d 954, 966 (2004). "In contrast to the goal of reasonable progress, reasonable efforts relate to the much narrower goal of correcting the conditions that were the basis for the removal of the child from the parent." *In re J.A.*, 316 Ill. App. 3d 553, 565, 736 N.E.2d 678, 688-89 (2000).

¶ 28 Here, it cannot be said the trial court's finding that respondent failed to make reasonable efforts to correct the conditions giving rise to the removal of the minors from her was against the manifest weight of the evidence. The conditions that gave rise to the removal of S.B. and C.B. involved the long history of domestic violence inflicted by Blevins.

¶ 29 During the nine-month period between March 14, 2013, and December 13, 2013, Dagg rated respondent as unsatisfactory on the cooperation task. Dagg was unable to conduct

any unannounced home visits since July 2013. Respondent missed appointments and failed to call to cancel or reschedule. Respondent violated the order of protection by allowing Blevins to have contact with the children and missed the order-of-protection hearing, resulting in its dismissal.

¶ 30 Dagg rated respondent unsatisfactory as to the parenting task because she put the children at risk of harm by permitting contact with Blevins. Dagg rated respondent unsatisfactory on the domestic-violence task because there was another incident of domestic violence and, although she met with three domestic-violence providers, "all of whom had indicated that, while [respondent] knew what she needed to do, she was unwilling to follow through what she needed to do to protect her and her children." In November 2013, Blevins returned to living with respondent. Respondent was also rated unsatisfactory as to the mental-health task because she had been discharged from therapy in June 2013 and had to engage again after the domestic-violence incident at the end of the month.

¶ 31 These actions illustrate respondent was unable or unwilling to make reasonable efforts to correct the conditions that gave rise to the removal of the minors from her. She repeatedly put her troubled relationship with Blevins ahead of the well-being of her children. Given this evidence, we find the trial court's finding of unfitness on this ground was not against the manifest weight of the evidence.

¶ 32 B. Evidence on the December 2014 Stabbing Incident

¶ 33 Respondent argues the trial court erred in allowing the State to present evidence outside the relevant nine-month periods, *i.e.*, the amended nine-month period from September 14, 2014, to June 13, 2015. Because we have found respondent unfit based on the evidence from the nine-month period from March 14, 2013, to December 13, 2013, this issue is moot.

¶ 34 C. Best-Interest Findings

¶ 35 Respondent argues the trial court's decision to terminate her parental rights was against the manifest weight of the evidence. We disagree.

¶ 36 "Courts will not lightly terminate parental rights because of the fundamental importance inherent in those rights." *In re Veronica J.*, 371 Ill. App. 3d 822, 831, 867 N.E.2d 1134, 1142 (2007) (citing *In re M.H.*, 196 Ill. 2d 356, 362-63, 751 N.E.2d 1134, 1140 (2001)). Once the trial court finds the parent unfit, "all considerations must yield to the best interest of the child." *In re I.B.*, 397 Ill. App. 3d 335, 340, 921 N.E.2d 797, 801 (2009). When considering whether termination of parental rights is in a child's best interest, 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).

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2012).

¶ 37 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 Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence in cases "where the opposite conclusion is clearly evident or where the findings are unreasonable, arbitrary, and not based upon any of the evidence." *In re Tasha L.-I.*, 383 Ill. App. 3d 45, 52, 890 N.E.2d 573, 579 (2008).

¶ 38 In the case *sub judice*, Dagg testified S.B. and C.B. had been placed with the same foster family since November 2013, except for a 45-day period when the foster father was hospitalized following an accident at work. Dagg stated the "minors are very bonded," with their foster parents, "especially [C.B.]" The minors even maintained contact with their foster parents during the year in which they had been placed back with respondent. Dagg stated the minors have known their foster parents for "a very long time" and refer to their foster mother as "Kimmy" and their foster father as "Papa Dave." The foster parents provide discipline to the minors and take them to their medical appointments. The foster parents also signed permanency commitments, and it was the intent of DCFS for the children to be adopted by them.

¶ 39 Dagg noted respondent had two supervised visits per month. She stated the children were bonded with her and they enjoy coming to see her. Respondent testified the visits went "great" and the children always call her "mom."

¶ 40 The trial court acknowledged respondent's love for her children. However, the court focused on the minors' need for permanency so as not to have the cases "languish for months and months and years and years with the children not knowing where they're going to be." The court found "the best chance for the minors to achieve permanency in these cases is

through pursuing the goal of adoption with the current foster parents." In contrast, the court noted a lack of evidence as to "when, if ever," respondent would be able to have the children returned to her on a permanent basis. The court concluded it was "not prepared today to trade the permanency that can be achieved fairly soon through the goal of adoption for the uncertainty of what may or may not happen with the parents."

¶ 41 While the evidence indicated respondent loves her children, it also showed she could not provide the permanency they need and deserve now in their young lives or in the near future. The minors' foster parents could provide them with that permanency. We find the trial court's decision finding it in the minors' best interest that respondent's parental rights be terminated was not against the manifest weight of the evidence.

¶ 42 III. CONCLUSION

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

¶ 44 Affirmed.