2015 IL App (4th) 150194-U

NO. 4-15-0194

FILED
July 9, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: K.J., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Morgan County
v.	)	No. 12JA11
JENNIFER JACKSON,	)	
Respondent-Appellant.	)	Honorable
	)	Jeffery E. Tobin,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Pope and Justice Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court found the trial court did not err in (1) finding respondent unfit and (2) terminating her parental rights.

¶ 2 In March 2012, the State filed a petition for adjudication of wardship with respect to K.J., the minor child of respondent, Jennifer Jackson. In September 2012, the trial court made the minor a ward of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS). In May 2014, the State filed a petition to terminate respondent's parental rights. In December 2014, the court found respondent unfit. In February 2015, the court found it in the minor's best interest that respondent's parental rights be terminated.

¶ 3 On appeal, respondent argues the trial court erred in (1) finding her unfit and (2) terminating her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In March 2012, the State filed a petition for adjudication of wardship with respect to K.J., born in April 2010, the minor child of respondent and Aaron Jackson. The petition alleged K.J. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2012)) because his mother and father had a domestically violent relationship and his father had been previously found to have abused/neglected respondent's two older children. The trial court entered a temporary custody order, finding probable cause to believe K.J. was neglected.

¶ 6 In June 2012, the trial court found the minor neglected. In its September 2012 dispositional order, the court found respondent unfit, unable, and unwilling to care for, protect, train, educate, supervise, or discipline the minor and placement with her would be contrary to the minor's health, safety, and best interest. The court adjudged the minor neglected, made him a ward of the court, and placed custody and guardianship of the minor with DCFS.

¶ 7 In May 2014, the State filed a petition to terminate respondent's parental rights. The petition alleged respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (count I) (750 ILCS 50/1(D)(b) (West 2014)) and (2) make reasonable efforts to correct the conditions that were the basis for the minor's removal (count II) (750 ILCS 50/1(D)(m)(i) (West 2014)). The State also alleged respondent was unfit because she failed to (1) make reasonable progress toward the return of the minor within the initial nine months of the adjudication of neglect (count III) and (2) make reasonable progress toward the minor's return during any nine-month period after the end of the initial nine-month period following the adjudication of neglect (count IV) (750 ILCS 50/1(D)(m)(ii) (West 2014) (petition improperly listed section 1(D)(m)(iii)). The State's petition

alleged Jackson was an unfit father on the same grounds. He died prior to the hearing on the petition.

¶ 8 In December 2014, the trial court held a hearing on the petition to terminate parental rights. Ryan Decker, respondent's probation officer, testified respondent was on probation in 2012 for child endangerment, but charges for that offense were later dismissed after respondent successfully appealed her conviction. In 2013, she was placed on probation for possession of methamphetamine. In March and April 2014, she tested positive for tetrahydrocannabinol. In September 2014, she tested positive for amphetamines. In December 2014, respondent was arrested for retail theft. Because of the positive drug test in 2014, the State's Attorney filed a petition to revoke her probation. Decker stated respondent was ordered to attend counseling and treatment, but she refused.

¶ 9 Rebecca Harley, a caseworker at Lutheran Child and Family Services (LCFS), testified she was assigned to respondent's case in April 2014. She stated respondent had not cooperated with social workers to combat her drug problem. She was referred to inpatient treatment but was unsuccessfully discharged. Respondent failed to maintain regular contact with LCFS and had been uncooperative. Respondent tested positive for marijuana in March and April 2014. In regard to respondent's service plans for the last two periods prior to the hearing, respondent did not make satisfactory progress during either plan as to substance-abuse treatment and mental-health treatment.

¶ 10 On cross-examination, Harley stated respondent completed parenting classes in November 2012 and had been consistent with visitation. Respondent completed substance-abuse treatment in December 2013.

¶ 11 Laura Weston, formerly a caseworker at LCFS, testified she handled respondent's

case from December 2012 to January 2014. During that time, Weston rated respondent's service plans as unsatisfactory overall. Weston stated respondent "made efforts but not progress." In the service plan ending in October 2013, Weston rated respondent unsatisfactory as to keeping her informed because her contact was "sporadic." Respondent "was not forthcoming with the information going on in her relationship and the ongoing domestic violence" between her and Aaron. Respondent was rated unsatisfactory on the need to report any substance-abuse relapse because she denied having a positive drug test in September 2013. She was also rated unsatisfactory in being honest with LCFS about her substance abuse, following through with recommendations by her counselor, and using controlled substances. Weston rated respondent unsatisfactory on reporting any incidents of violence because there were "several incidents of domestic violence reported during the six-month time frame." Weston stated respondent was unsuccessfully discharged from counseling in August 2013. Respondent rated unsatisfactory in being honest with her counselors. She also failed to reengage in completing a mental-health assessment. Weston rated respondent satisfactory as to meeting with her in the home, allowing LCFS to communicate with providers, attending parenting classes, and demonstrating appropriate parenting and disciplinary skills during interactions.

¶ 12 Respondent testified she has been prescribed medication for her fibromyalgia and cervical neck pain caused by bone spurs. She stated she was unable to begin inpatient treatment because she was on alprazolam and hydrocodone. She denied using cocaine but stated her "addictions were marijuana and methamphetamines." She stated she planned on leaving Aaron but every time she left, she went back to him.

¶ 13 Following closing arguments, the trial court found the State failed to prove respondent unfit on count I. The court found respondent unfit for failing to make reasonable

progress toward the minor's return "within a nine-month period after an adjudication of neglect or abuse." The court's written order indicated respondent was unfit for failing "to make reasonable progress toward the return of the child to the parent within 9 months after adjudication of neglect or abuse specifically regarding the lack of progress concerning the domestic abuse issue which first brought the child into care under [section] 1(D)(m)."

¶ 14 In February 2015, the trial court conducted the best-interest hearing. Rebecca Harley testified she met with K.J. and his foster parents. She stated four-year-old K.J. is "very bonded to his foster family" and it is "a great relationship for him." He has been in the foster placement since August 2013. Harley stated she has seen K.J. "grow exponentially while he's been in this foster home" and his medical needs, including dental issues and speech problems, have been addressed.

¶ 15 Respondent testified she exercised regular visitation with K.J. She also made all of his doctors' appointments. She stated she loved her son, and he calls her "Mommy." On cross-examination, she stated she was not working, but she filed for disability and has "a huge support system" to help out.

¶ 16 The trial court found it in the minor's best interest that respondent's parental rights be terminated. The court stated K.J. was "thriving" in his current environment, "feels loved in his foster home," and was "in need of permanence and stability." This appeal followed.

¶ 17 II. ANALYSIS

¶ 18 A. Unfitness Findings

¶ 19 Respondent argues the trial court erred in finding her unfit. We disagree.

¶ 20 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).

¶ 21 In this case, the State, in its May 2014 petition to terminate respondent's parental rights, alleged respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to K.J.'s welfare. The State also alleged respondent was unfit under section 1(D)(m) of the Adoption Act for failing:

> "(i) to make reasonable efforts to correct the conditions which were the basis of the removal of the child from such parents; or (ii) to make reasonable progress toward the return of the child to such parents within 9 months after an adjudication of neglected minor under the Juvenile Court Act; or (iii) or to make reasonable progress toward the return of the child to them during any 9-month period after the end of the initial 9-month period following adjudication of neglected minor under Section 2-3 of the Juvenile Court Act of 1987."

We note the General Assembly rewrote section 1(D)(m) of the Adoption Act, effective January

1, 2014, stating a parent is unfit for failing to make reasonable efforts or "(ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under Section 2-3 of the Juvenile Court Act of 1987 or dependent minor under Section 2-4 of that Act." 750 ILCS 50/1(D)(m)(ii) (West 2014). We also note the statute requires the State to "file with the court and serve on the parties a pleading that specifies the 9-month period or periods relied on." 750 ILCS 50/1(D)(m) (West 2014). The State did not do so here.

¶ 22 The trial court, in its oral pronouncement on fitness, found the State failed to meet its burden on count I, involving a reasonable degree of interest, concern, or responsibility (750 ILCS 50/1(b) (West 2014)). However, the court found the State met its burden by clear and convincing evidence that respondent was unfit under section 1(D)(m) "as there has been a failure to make reasonable progress toward the return of the child to [respondent] within a nine-month period after an adjudication of neglect or abuse." In its written order, the court found "[t]he State proved that the mother failed to make reasonable progress toward the return of the child to the parent within 9 months after adjudication of neglect or abuse specifically regarding the lack of progress concerning the domestic abuse issue which first brought the child into care under [section] 1(D)(m)."

¶ 23 On appeal, respondent argues the trial court erred in finding her unfit, contending she made "substantial progress." The State disagrees, arguing respondent was rated unsatisfactory in many areas and did not make substantial progress in addressing the domestic-violence issue. In her reply brief, respondent contends the State's arguments "included evidence outside the relevant time period." She argues "the trial court only found the State to have met its burden concerning one nine month period, specifically, within nine months after adjudication."

Since the adjudicatory order was entered June 8, 2012, respondent states the only relevant nine-month time period ran from June 2012 to March 2013. Respondent argues the bulk of the State's evidence involved her actions outside this time period. See *In re Reiny S.*, 374 Ill. App 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (stating that in determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period).

¶ 24 We disagree with respondent's contention that the trial court only found the State met its burden concerning the initial nine-month period following the adjudication of neglect. Although the court's written order finding respondent unfit for failing to make reasonable progress "within 9 months after adjudication of neglect" appears to support respondent's contention, the court's oral pronouncement found respondent unfit for failing to make reasonable progress "within *a* nine-month period after an adjudication of neglect or abuse." (Emphasis added.) We note that where the oral pronouncement of the court and its written order are in conflict, the oral pronouncement controls. *In re William H.*, 407 Ill. App. 3d 858, 866, 945 N.E.2d 81, 88 (2011). We also reiterate the new version of section 1(D)(m), applicable at the time the State filed the termination petition, no longer separates the initial nine-month period from others but looks at a parent's reasonable progress "during any 9-month period" following the adjudication of neglect. 750 ILCS 50/1(D)(m)(ii) (West 2014). Accordingly, based on the statute and the court's oral ruling, we need not constrain our review of respondent's progress in this case to the initial nine-month period.

¶ 25 "Reasonable progress" is an objective standard that "may be found when the trial court can conclude the parent's progress is sufficiently demonstrable and of such quality that the child can be returned to the parent in the near future." *In re Janine M.A.*, 342 Ill. App. 3d 1041, 1051, 796 N.E.2d 1175, 1183 (2003).

> "[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).

"The law does not afford a parent an unlimited period of time to make reasonable progress toward regaining custody of the children." *In re Davonte L.*, 298 Ill. App. 3d 905, 921, 699 N.E.2d 1062, 1072 (1998). "At a minimum, reasonable progress requires measurable or demonstrable movement toward the goal of reunification." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006).

¶ 26 Looking beyond the nine-month period ending on March 7, 2013, which would run through December 6, 2013, Weston testified she rated respondent's service plan in October 2013. Weston rated respondent unsatisfactory because prior to August 2013, she failed to keep LCFS informed as to ongoing domestic violence in her home. Weston stated the service plan required respondent to be honest with all providers and to recognize that a lack of honesty would negatively impact her ability to reunite with K.J. Weston stated respondent was not open and honest with her counselor and was unsuccessfully discharged from counseling in August 2013.

¶ 27 Here, respondent failed to made substantial progress in addressing domestic violence. As stated by Weston, respondent failed to comply with the requirements of her service plan. See 750 ILCS 50/1(D)(m) (West 2014) (stating failure to make reasonable progress

"includes the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care during any 9-month period"). Respondent acknowledges domestic violence was the reason K.J. came into care, and she states the abuser is no longer a threat because he is deceased. However, the fact K.J.'s father died does not excuse respondent's failure to comply with the requirements of her service plan.

¶ 28 We note this court "may affirm the trial court's decision on any basis established by the record." *In re K.B.*, 314 Ill. App. 3d 739, 751, 732 N.E.2d 1198, 1208 (2000). Here, the evidence indicates respondent failed to make reasonable progress in addressing her substance abuse, providing information to caseworkers or counselors, and addressing her mental-health issues. Weston rated respondent unsatisfactory for failing to be honest about her relapse as it related to a positive drug drop in September 2013. She was not open and honest with her counselor and was discharged from counseling. Weston also stated respondent failed to complete a mental-health assessment at another provider after being discharged unsuccessfully from counseling.

¶ 29 The evidence indicated respondent failed to make progress that was reasonable and of such quality that K.J. could be returned to her in the near future. Thus, we find the trial court's finding of unfitness was not against the manifest weight of the evidence. Because we have upheld the court's finding that respondent met one of the statutory definitions of an unfit person (750 ILCS 50/1(D)(m)(ii) (West 2014)) during an applicable nine-month period, and because meeting one definition is enough to make her an unfit person, we need not review a second possible nine-month period under section 1(D)(m)(ii). See *Tiffany M.*, 353 Ill. App. 3d at 891, 819 N.E.2d at 820.

¶ 30 B. Best-Interest Findings

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

¶ 32 "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 2014). 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."
> *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

See also 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014). "Additionally, a court may consider the nature and length of the child's relationship with his present caretaker and the effect that a change

in placement would have upon his emotional and psychological well-being." *In re Jaron Z.*, 348 Ill. App. 3d 239, 262, 810 N.E.2d 108, 127 (2004).

¶ 33 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).

¶ 34 In the case *sub judice*, Harley testified four-year-old K.J. had been in foster placement since August 2013. She found him to be "very bonded to his foster family," and it was a "very loving" and "great relationship" for him. Harley testified to K.J.'s various medical issues, including dental issues, regular bouts of pneumonia, and asthma. She stated his foster parents have addressed his medical needs and utilized services to help K.J.'s speech problems. Harley stated she had "absolutely no concerns about the well-being" of K.J. and "couldn't imagine a better" foster home for him.

¶ 35 Respondent testified she had a home for K.J. and she had been living there since May 2014. She had exercised regular visitation and took him to his medical appointments when he was in her care. She testified she loves her son and could provide for him if he were returned to her.

¶ 36 In looking at the statutory factors, the trial court noted K.J.'s mental and physical safety and welfare has "greatly improved" and he is "thriving" in his current environment. The court found "the child is attached, that he feels loved in his foster home, and that he feels very secure in his foster home." The court also found K.J. was "in need of permanence and stability."

¶ 37 The evidence indicated K.J. was in a safe and secure foster home and his needs were being met. While it is clear respondent loves her son, she has not shown the ability to provide him with the safe and stable lifestyle he needs as a growing boy. Considering the evidence and the best interest of the minor, we find the trial court's order terminating respondent's parental rights was not against the manifest weight of the evidence.

¶ 38 III. CONCLUSION

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

¶ 40 Affirmed.