2015 IL App (4th) 150212-U

NO. 4-15-0212

FILED
August 20, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: P.K., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA50
NAISHIA CARROLL,	)	
Respondent-Appellant.	)	Honorable
	)	Richard P. Klaus,
	)	Judge Presiding.

JUSTICE KNECHT delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: (1) The trial court's finding respondent was unfit was not against the manifest weight of the evidence.

(2)The trial court's finding it was in the best interests of the minor to terminate respondent's parental rights was not contrary to the manifest weight of the evidence.

¶ 2 Respondent mother, Naishia Carroll, appeals the orders finding her unfit and terminating her parental rights to her child. We affirm.

¶ 3 I. BACKGROUND

¶ 4 In October 2013, the State filed a petition for adjudication of wardship as to P.K., born September 29, 2013. The State alleged three counts of neglect involving respondent.

¶ 5 A. Neglect Adjudication

¶ 6 In November 2013, at the adjudicatory hearing, respondent admitted P.K. was neglected because her environment exposed her to domestic violence. The State dismissed the remaining counts.

¶ 7 The Illinois Department of Children and Family Services (DCFS) received a hotline report on September 30, 2013, the day after P.K.'s birth in Urbana. It was reported respondent's parental rights to five of her previous six children were in the process of being terminated in Ohio. The hotline report further indicated respondent's sixth child was in relative foster care and respondent crossed state lines to give birth to her seventh child. On October 1, 2013, a DCFS child-protection specialist learned the termination of respondent's parental rights was "imminent." Respondent was supposed to appear on September 23, 2013, for a hearing in Ohio when she reported she could not appear due to "a late[-]term abortion." The specialist learned the children were removed in February 2011 because respondent left the children home alone for long periods of time, the conditions of the home were poor, and respondent had substance-abuse issues and untreated mental-health concerns.

¶ 8 DCFS received documents from the Department of Children and Family Services in Cleveland, Ohio (DCFS Ohio), which included a service plan dated July 29, 2013. These documents indicated respondent completed parenting classes but failed to demonstrate the skills she learned in the classes. Respondent had a history of evictions and had seven different residences since the case in Ohio was opened in 2011. Respondent completed a psychological evaluation but only sporadically attended counseling. She was diagnosed with depression, narcissism, and adjustment disorder. Respondent had also been referred to domestic-violence classes but did not attend. She had failed to comply with five urine screens. Finally, respondent

was usually late to visits with her children and actually missed "many."

¶ 9 On October 1, 2013, DCFS took protective custody of P.K. because of the unresolved issues in Ohio. Respondent expressed concern over how she would visit her child because she lived in Missouri with her father. However, DCFS Ohio believed she still lived in Ohio.

¶ 10 The dispositional hearing was held on December 16, 2013. A report was prepared for the hearing with the same history as that at the shelter-care hearing. Additional information included the fact respondent was unemployed and received $639 per month in Social Security benefits. Respondent reported she began receiving those benefits when she was a child and did not know why she continued to receive them. Respondent reported being in a relationship with Anthony King, Sr. Their relationship was "sometimes good and sometimes bad." According to respondent, King had a history of infidelity, physically abused her, used marijuana, and had a criminal record. Respondent reported living with her sister in Ohio, where she had lived in eight different homes during the two-year course of her case.

¶ 11 Respondent completed a 16-week parenting class in Ohio. This was the only recommended service completed by respondent, but she was unable to demonstrate her parenting skills during visits and struggled with appropriate disciplinary methods. Respondent missed several visits and did not understand how missed visits could cause children emotional trauma.

¶ 12 According to the dispositional reports, respondent denied previous mental-health diagnoses, hospitalizations, or treatments. Records from DCFS Ohio showed a psychological evaluation of respondent was performed and she was diagnosed with depression, narcissism, and adjustment disorder. Counseling was recommended as treatment but respondent did not attend

any counseling sessions.

¶ 13 Respondent denied to DCFS she traveled to Illinois to give birth to P.K. to avoid further DCFS Ohio involvement. She stated she was traveling through Illinois to visit relatives and P.K. was born early. However, DCFS Ohio claims respondent told them she could not be at a court hearing in Ohio because she was hospitalized due to a late-term abortion.

¶ 14 At the conclusion of the dispositional hearing, DCFS recommended custody and guardianship be placed with DCFS. The trial court considered orders from Ohio courts terminating respondent's parental rights to five of her children. Respondent asked to make some corrections to the evidence. She stated she was not in a relationship with King. Respondent also indicated she completed three classes of a seven-week domestic-violence course and expected to finish the course in another month. Respondent also stated she attempted to schedule counseling sessions in the beginning of December and was waiting for a return call.

¶ 15 At the conclusion of the hearing, the trial court found it was in P.K.'s best interests she be made a ward of the court adjudged neglected. The court found respondent and King unfit and unable to act as custodial parents and ordered custody and guardianship of P.K. be placed with DCFS. P.K. was placed in foster care.

¶ 16 Respondent appealed the order placing custody and guardianship of P.K. with DCFS, arguing the trial court's findings were against the manifest weight of the evidence. On April 30, 2014, this court affirmed the trial court's order of unfitness. *In re P.K.*, 2014 IL App (4th) 131124-U.

¶ 17 B. Termination Proceedings

¶ 18 On August 19, 2014, the State filed a motion seeking a finding of unfitness and

termination of respondent's and King's parental rights. Both respondent and King were alleged to have failed to (1) make reasonable efforts within the first nine months of the adjudication of neglect to correct conditions which were the basis for the removal of P.K. from them; (2) make reasonable progress toward the return of P.K. within the first nine months after the adjudication of neglect; and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of P.K.

¶ 19 Yalonda King, P.K.'s paternal grandmother, filed a petition for leave to intervene and petition for adoption on January 2, 2015. Yalonda King argued she already had full custody of P.K.'s two-year-old sibling. No immediate action was taken on the petition.

¶ 20 On January 29, 2015, the trial court held a hearing on the motion to terminate parental rights. Respondent was not present for the hearing. Hattie Lenoir-Price, an advocate from Family Advocacy in Champaign County, testified. Family Advocacy helps clients "navigate through the various systems of care." Respondent was referred to Family Advocacy in February 2014, but she did not make contact with the center until October 2014. Lenoir-Price did speak with respondent on October 20, 2014, but respondent advised her she could not talk at that time and would call back. Respondent failed to contact Family Advocacy again. Lenoir-Price continued to attempt to make contact with respondent but has to date been unable to do so.

¶ 21 Arnetha Truss, respondent's caseworker from DCFS, also testified. Truss communicated with DCFS Ohio to determine whether Ohio's referrals were sufficient for respondent's Illinois DCFS case. Truss determined they were but advised respondent DCFS was "unable to contract or pay for her services" because respondent resided in Ohio.

¶ 22 Truss requested respondent complete the following services in Ohio: domestic-

violence treatment, mental-health treatment, and substance-abuse assessments. She requested documentation from respondent showing she completed these programs. Respondent never provided any documentation regarding a substance-abuse program. Respondent attended domestic-violence services, but she did not successfully complete the program. Respondent failed to provide documentation about a mental-health assessment, although she did report she participated in individual counseling. There were no reports from the therapist or any reports as to psychiatric diagnoses. Respondent did submit to one drug test but tested positive for marijuana. Respondent had two in-person visits with P.K. and two telephone visits. Her last visit with P.K. was in 2013.

¶ 23 Respondent's counsel argued traveling to Illinois for the hearing was a financial hardship for her. She had minimal income from Social Security and "she couldn’t afford" the costs of travel or classes. Respondent argued she was unable to complete DCFS's requirements based on "economic [] circumstances."

¶ 24 The trial court noted respondent chose to travel to Illinois to give birth to her child. Her inability to attend services in Illinois was of her own making. However, she was given the opportunity to attend services in Ohio and did not finish them or provide documentation showing she finished the services. The court noted respondent's parental rights to P.K.'s five siblings in Ohio had been terminated. The court found the father, King, to be in default. Both parents were found to be unfit and a best-interests hearing was set for March 2015.

¶ 25 On March 13, 2015, a best-interests hearing was held. A report was prepared for the hearing by Cunningham Children's Home regarding respondent's background and progress and P.K.'s progress. The report noted respondent failed to submit to drug testing, missed visits

with P.K., and failed to complete the tasks given to her. The report noted P.K. was "happy," and she "walks, runs, and climbs." P.K. was bonded to her foster family. The foster parents wanted to provide permanency for P.K. through adoption.

¶ 26 The report also considered Yalonda King's petition for adoption but decided it was best for P.K. to remain with her foster family, the only family P.K. had ever known.

¶ 27 Yalonda King's petition was considered at the best-interests hearing. The trial court found the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/1-5 (West 2014)) did not "encompass" intervention by a grandparent.

¶ 28 In ruling on P.K.'s best interests, the trial court noted P.K. already lived in the only home she has ever known and she was bonded to her foster parents. The court also noted the foster parents' willingness to adopt. The court found P.K. should remain with her foster family. The court then noted respondent's lack of progress throughout the proceedings. The court found it in P.K.'s best interests to terminate respondent's and King's parental rights.

¶ 29 This appeal followed.

¶ 30 II. ANALYSIS

¶ 31 Respondent argues both the trial court's decisions she was an unfit parent and it was in the best interests of P.K. to terminate her parental rights were against the manifest weight of the evidence.

¶ 32 A. Parental Unfitness

¶ 33 Respondent argues DCFS failed to make the necessary efforts to help her, a non-resident, indigent parent. Respondent asserts DCFS's failure to help her navigate the termination process left her unable to complete the tasks requested of her, resulting in a finding of unfitness.

¶ 34 The State argues, first, respondent's unfitness argument is barred by the doctrine of *res judicata*. The State contends the previous appeal already decided the issue of unfitness and respondent could have and should have raised the argument of DCFS's failure to help her complete the tasks requested of her then. Since the issue could have been raised in the previous appeal, but was not, the State argues this issue is procedurally defaulted and barred by the doctrine of *res judicata*. *People v. Rissley*, 206 Ill. 2d 403, 412, 795 N.E.2d 174, 179 (2003).

¶ 35 The doctrine of *res judicata* is not applicable here. The doctrine only applies when the same issue has been previously decided. That is not the case here. While the same word, "unfitness," was used in the neglect finding and the termination finding, they are not the same. After the neglect finding, the trial court found respondent was "unfit and unable to act as custodial parent" and ordered custody and guardianship of P.K. to be placed with DCFS. After that, respondent was given various tasks to complete to show she was fit and able to act as a custodial parent by showing P.K. would no longer be subject to exposure to domestic violence.

¶ 36 After the termination motion was filed and a hearing was held, respondent was found to be an unfit parent due to failure to (1) make reasonable efforts within the first nine months after the adjudication of neglect to correct the conditions which were the basis for the removal of P.K.; (2) make reasonable progress toward the return of P.K. within the first nine months after the adjudication of neglect; and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of P.K. First, this is a different time period in which respondent's unfitness is measured. Second, this is a finding of unfitness to be a parent at all as opposed to the first finding of unfitness to have custody of P.K. at that time. The finding of unfitness in the termination proceeding is a different finding of unfitness and respondent may

raise the issue of DCFS's failure to help her perform the tasks required of her in this appeal.

¶ 37 The trial court's finding of unfitness was not against the manifest weight of the evidence. The State must prove a parent's unfitness by clear and convincing evidence. A trial court's finding will not be reversed unless it is against the manifest weight of the evidence. A finding is against the manifest weight of the evidence only if an opposite conclusion is readily apparent. *In re Addison R.*, 2013 IL App (2d) 121318 ¶ 22, 989 N.E.2d 224. Great deference is afforded the trial court, given its superior opportunity to view and evaluate the witnesses and their testimony. *In re D.L.W.*, 226 Ill. App. 3d 805, 811, 589 N.E.2d 970, 974 (1992).

¶ 38 Respondent was found unfit due to her failure to (1) make reasonable efforts toward correcting the problem presented when P.K. was found to be neglected, (2) make reasonable progress toward the return of P.K. to her, and (3) maintain interest in P.K. Respondent did not argue she made the required efforts or progress. Instead, she argues DCFS did not make reasonable efforts to help her achieve the required progress.

¶ 39 Respondent argues the record showed she was indigent throughout the case, from her affidavit in support of request for appointed counsel through appointment of counsel on appeal. Further, she has lived throughout this case in Cleveland, Ohio, 8 to 10 hours away by car. Respondent also argues she was left to her own devices to arrange for service providers and payment for their services as well as facilitating communications between them and DCFS. These tasks are sufficiently complicated that, for residents of Illinois, agencies such as Family Advocates in Champaign County provide support navigation services to parents.

¶ 40 Respondent argues given the Juvenile Court Act's scheme for reunification of families, a parent's lack of reasonable progress toward assigned goals logically implies DCFS

has not fulfilled its obligation to make reasonable efforts in providing services to facilitate achievement of permanency goals. Respondent contends, even it were reasonable for DCFS to adopt as its own the referrals DCFS Ohio had made for respondent, it was not reasonable for DCFS to do nothing more except fault respondent for not complying with the adopted recommendations. Respondent argues the "record is vague as to what [respondent] has or has not done."

¶ 41 We disagree. The record indicates DCFS made numerous efforts to speak with respondent and give her instructions on how to complete the required tasks. DCFS tried to make it easier for respondent, an indigent nonresident, to comply with required tasks by adopting those already assigned by DCFS Ohio, but it also communicated with DCFS Ohio to determine whether respondent was complying with the tasks.

¶ 42 Respondent failed to make reasonable progress toward the return of P.K. within nine months after an adjudication of neglect. Reasonable progress is an objective standard, focusing on the amount of progress toward the goal of reunification under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). Reasonable progress requires, at a minimum, measurable or demonstrable movement of sufficient quality the trial court will be able to order the minor returned to parental custody in the near future. *In re L.L.S.*, 218 Ill. App. 3d 444, 460-61, 577 N.E.2d 1375, 1386-87 (1991).

¶ 43 The record shows although respondent completed parenting classes, she did not demonstrate her learned skills in visits with the children in Ohio. Respondent only had two in-person visits with P.K. while she was a newborn. Those visits went well but there were no more. Respondent completed a psychological evaluation, but she only sporadically attended the

necessary mental-health counseling sessions. Respondent claimed to be the victim of domestic violence but failed to complete domestic-violence counseling sessions. The DCFS Ohio case manager told DCFS respondent did not initially attend domestic-violence services but attended regularly during October 2013. Respondent maintained telephone contact with her DCFS Ohio case manager but failed to attend an appointment on December 2, 2013, and had no contact with DCFS Ohio since then.

¶ 44 In the initial dispositional report prepared by DCFS on December 3, 2013, it was noted respondent stated she wanted to pursue reunification with P.K. and was willing to engage in services. It was also noted respondent stated she was not willing to relocate to Illinois. Because respondent was a resident of Ohio, DCFS was unable to provide respondent with the recommended services and could not monitor respondent's living environment and, therefore, it would be imperative for respondent to take the initiative to engage in services and provide documentation of those services. After that report, however, DCFS contacted DCFS Ohio and determined the services provided in Ohio would be sufficient to satisfy DCFS requirements. Therefore, DCFS requested respondent complete the following services in Ohio: domestic-violence treatment, mental-health treatment, and substance-abuse assessments.

¶ 45 Based on these instances of communications between respondent, DCFS and DCFS Ohio, the claim DCFS "exerted almost no effort to help" respondent is false. DCFS counseled respondent on what she needed to do and how she needed to do it. Respondent was afforded the opportunity to use Ohio services so long as she provided documentation to DCFS. The documentation could easily have been mailed to DCFS or respondent could have simply requested respective providers send documentation to DCFS. Respondent failed to do so. The

"vague" record as to what respondent "has or has not done" is solely the fault of respondent, not DCFS.

¶ 46 Respondent's claim the record does not clearly and convincingly prove her unfitness due to lack of effort on behalf of DCFS is rejected. DCFS made more than sufficient efforts at guiding respondent through the termination process. Respondent chose to ignore their advice. The trial court's finding respondent was an unfit parent is not against the manifest weight of the evidence.

¶ 47 B. Best Interests

¶ 48 Respondent argues termination of her parental rights was not in the best interests of P.K. She contends the record is "cloudy" with regard to her circumstances in Ohio; thus, the trial court had insufficient information to make a thorough evaluation of P.K.'s best interests.

¶ 49 Following a finding of unfitness, the focus shifts to the child. The issue is whether, in light of the child's needs, parental rights should be terminated. Accordingly, the parent's desire to maintain the parent-child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). The State must prove by a preponderance of the evidence it is in the child's best interests the parental rights be terminated. *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "A reviewing court will not disturb a trial court's determination unless it is against the manifest weight of the evidence." *In re S.M.*, 314 Ill. App. 3d 682, 687, 732 N.E.2d 140, 144 (2000).

¶ 50 The record indicates P.K. has only spent a few hours of her life with respondent. She has spent her entire life with her foster family. P.K. has bonded to her foster family, particularly her foster parents. Both caseworkers and the trial court agreed P.K.'s foster family

provided P.K. with permanence, stability, and family relationships. There was an opportunity for more permanency as the foster parents expressed a desire to adopt P.K. Considering these factors, the court's decision to terminate respondent's parental rights is not against the manifest weight of the evidence.

¶ 51 III. CONCLUSION

¶ 52 For the foregoing reasons, we affirm the judgment of the trial court.

¶ 53 Affirmed.