2015 IL App (4th) 150264-U

NO. 4-15-0264

FILED
August 28, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.W., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v.	)	No. 13JA50
MICHAEL WILLIAMS,	)	
Respondent-Appellant.	)	Honorable
	)	Claudia S. Anderson,
	)	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 finding respondent unfit or terminating his parental rights.

¶ 2 Respondent father, Michael Williams, was found to be unfit and his parental rights to his child, J.W. (born April 7, 2013), were terminated. Respondent appeals, arguing the trial court abused its discretion in (1) finding him unfit and (2) terminating his parental rights. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On January 9, 2011, police were called to respondent's residence for a domestic-violence incident involving respondent and J.W.'s mother, Trishia Brown. (We note Brown is not a party to this appeal.) Both respondent and Brown were arrested for domestic battery and

possession of controlled substances. Both were intoxicated at the time of their arrest. Due to safety concerns involving a history of domestic violence between respondent and Brown, their three children, K.W. (born August 21, 2002), M.W. (born August 29, 2007), and E.W. (born January 18, 2009), were placed in protective custody. (Respondent's parental rights as to K.W., M.W., and E.W. are not at issue in this appeal.)

¶ 5 On April 7, 2013, J.W. was born to respondent and Brown.

¶ 6 On April 10, 2013, the State filed a petition for adjudication of wardship regarding J.W. The petition alleged J.W. was a neglected child pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2012))), in that "his environment is injurious to his welfare due to the parents having three prior open cases with the Department of Children and Family Services [(DCFS)] and the parents have not made enough reasonable progress in their services to have the children returned to their care." Following the hearing on the State's petition, the trial court found, while there was probable cause to bring the petition and have the case proceed, there was not enough of an immediate and urgent necessity to take J.W. into protective custody.

¶ 7 However, following a June 13, 2013, status hearing, the trial court found an immediate need existed to remove J.W. from the home. Testimony at that hearing indicated concerns existed regarding the possible sexual victimization of one or more of the older children. There were a number of persons living in the home, one of whom was "listed as a possible sexual perpetrator to the children." According to the court, the parents did not have a clear understanding of the sexual-abuse issues present within the family dynamic and failed to remove all other persons from the home.

¶ 8 During the February 27, 2014, adjudicatory hearing, Brett Stine, respondent's probation officer, testified respondent had tested positive for opiates, benzodiazepines, and cocaine following a September 26, 2013, drug test. Brittany Lutz, a caseworker for Lutheran Social Services, testified she rated respondent's service plans as unsatisfactory. According to Lutz, respondent's cooperation had been on a "downslide" since August 2013. Lutz indicated respondent had not been cooperating with services and continued to use drugs.

¶ 9 During an April 2, 2014, dispositional hearing, Lutz testified respondent had failed to make contact with DCFS since the adjudicatory hearing. According to Lutz, respondent also had no visits with J.W. since October 1, 2013. Lutz testified a court order went into effect on October 3, 2013, requiring respondent to participate in drug drops. The order was entered following a positive drug test on September 26, 2013. At the conclusion of the hearing, the trial court adjudicated J.W. neglected, made him a ward of the court, and placed his care and custody with DCFS.

¶ 10 A July 23, 2014, permanency report prepared by Lutheran Social Services in anticipation of the July 30, 2014, review hearing indicated respondent was being held at the Danville Public Safety Building on drug possession charges. According to the report, respondent completed a substance-abuse assessment on January 10, 2012, but he did not meet the criteria for treatment and needed to complete a new evaluation due to positive drug tests for cocaine and heroin. According to the report, respondent failed to engage in drug screens 24 hours in advance of visitations, which prevented him from having visits with J.W. The report indicated respondent had completed a Family Life Skills course on May 29, 2012. The report recommended a permanency goal of return home within 12 months.

¶ 11 A client-service plan filed on July 28, 2014, indicated the goal had changed with regard to his three other children to substitute care pending termination of parental rights.

¶ 12 During the July 30, 2014, permanency-review hearing, Jevanna Abelard, a child-welfare specialist with Lutheran Social Services, testified respondent had been in jail since May 21, 2014. Abelard testified she presented a copy of the most recent service plan to respondent in person at the jail. According to the plan, respondent needed to "stay drug free, provide a home, gain employment, stay domestic-violence free, [and] participate in family counseling." Abelard acknowledged respondent's incarceration unfortunately limited what he could do regarding those services. Abelard testified prior to his incarceration, respondent missed visitations with J.W. due to missed and failed drug tests.

¶ 13 On August 6, 2014, the State filed a petition to terminate respondent's parental rights as to J.W., alleging he was unfit pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D)(a),(b), (c) (West 2014)) because he (1) abandoned J.W.; (2) failed to demonstrate a reasonable degree of interest, concern, or responsibility for J.W.'s welfare; and (3) deserted J.W. for more than three months preceding the commencement of the termination action.

¶ 14 On February 5, 2015, the trial court terminated respondent's parental rights as to K.W., M.W., and E.W. See *In re K.W.*, 2015 IL App (4th) 150092-U (unpublished order under Supreme Court Rule 23) (affirming the trial court's judgment).

¶ 15 During the March 25, 2015, hearing on the State's petition to terminate parental rights as to J.W, Bill Fraley, a therapist with the Center for Children's Services, testified respondent had been unsuccessfully discharged from counseling. Fraley testified he discussed

prior failed drug tests with respondent. According to Fraley, respondent was adamant the results were "false positives" caused by prescription medication.

¶ 16 Lindsey Ketcherside, a DCFS caseworker, testified respondent had not completed any services or had any visits with J.W. from June 2014 to the time of the hearing. Ketcherside explained in order to visit with J.W., respondent would have to complete services and participate in drug tests. He had not given any drug drops during that period. Ketcherside testified respondent had been incarcerated since May 2014 and she had no contact with him.

¶ 17 Respondent testified his incarceration had prevented him from making contact with DCFS and J.W. Respondent testified he had been in jail from May 2014 to December 2014. Respondent was transferred from jail to prison on December 5, 2014, as a result of his guilty plea for possession of heroin. Respondent reported an expected release date of November 1, 2015. According to respondent, he provided DCFS with copies of his prescription medications and signed releases for his medical records.

¶ 18 At the conclusion of the hearing, the trial court found the State had proven by clear and convincing evidence respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to J.W. Specifically, the court found no visitations had taken place and no effort had been made to engage in services.

¶ 19 The trial court then held the best-interest hearing. During that hearing, Ketcherside testified J.W. had been in the same foster home since July 19, 2013. She had observed J.W. in the foster home and testified his foster parents are "very, very good with him." According to Ketcherside, J.W.'s foster mother is "loving, caring, gives [J.W.] structure, and makes sure he is being safe." Ketcherside reported having no reservations about J.W. remaining with his foster

parents. Ketcherside believed, but was not certain, the foster parents were willing to provide permanency through adoption.

¶ 20 The guardian *ad litem* (GAL) agreed it was in J.W's best interest to terminate respondent's parental rights. The GAL stated she had spoken with the foster parents many times and assured the trial court they "are definitely willing to provide [permanency through] adoption."

¶ 21 At the conclusion of the hearing, the trial court found it was in J.W.'s best interest that respondent's parental rights be terminated. In making its ruling, the court stated the following:

> "[T]his case commenced in April of 2013, and [J.W.] needs permanency. Even under best of all worlds, you get out of prison, sir, you have to establish a house, you have to establish a job, you would have to establish a lack of criminality, you would have to go through services, and that would be another year for that child to wait for permanency. That's not in [J.W.'s] best interest."

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 On appeal, respondent argues the trial court erred in finding (1) him unfit and (2) it was in J.W.'s best interest to terminate his parental rights. We disagree.

¶ 25 A. Finding of Unfitness

¶ 26 The State must prove unfitness by clear and convincing evidence. *In re M.H.*, 196 Ill. 2d 356, 365, 751 N.E.2d 1134, 1141 (2001). A trial court's finding of unfitness will be

reversed only if it is against the manifest weight of the evidence. *In re A.W.*, 231 Ill. 2d 92, 104, 896 N.E.2d 316, 323 (2008). " '[A] finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident.' " *A.W.*, 231 Ill. 2d at 104, 896 N.E.2d at 323-24 (quoting *In re Arthur H.*, 212 Ill. 2d 441, 464, 819 N.E.2d 734, 747 (2004)). "As the grounds for unfitness are independent, the trial court's judgment may be affirmed if the evidence supports the finding of unfitness on any one of the alleged statutory grounds." *In re H.D.*, 343 Ill. App. 3d 483, 493, 797 N.E.2d 1112, 1120 (2003).

¶ 27 In this case, the trial court found respondent unfit pursuant to, *inter alia*, section 1(D)(b) of the Adoption Act (750 ILCS 50/1(D)(b) (West 2014)). Under that section, a parent is unfit if the trial court finds by clear and convincing evidence the parent failed "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750 ILCS 50/1(D)(b) (West 2014). Before finding a parent unfit on this ground, the trial 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.

¶ 28 A 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). "Noncompliance with an imposed service plan, a continued

addiction to drugs, a repeated failure to obtain treatment for an addiction, and infrequent or irregular visitation with the child have all been held to be sufficient evidence warranting a finding of unfitness under subsection (b)." *Jaron Z.*, 348 Ill. App. 3d at 259, 810 N.E.2d at 125. " 'If personal visits were somehow impractical, courts consider whether a reasonable degree of concern was demonstrated through letters, telephone calls, and gifts to the child, taking into account the frequency and nature of those contacts.' " *In re Konstantinos H.*, 387 Ill. App. 3d 192, 204, 899 N.E.2d 549, 559 (2008) (quoting *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1064, 859 N.E.2d 123, 135 (2006)).

¶ 29 Here, the testimony at the fitness hearing established respondent failed to complete any of the directives in his service plan. Respondent did not have any visits with J.W. after October 1, 2013. Submitting to and passing drug tests were a prerequisite to visitation with J.W. His failed drug tests demonstrate he was more interested in drugs than J.W.'s welfare. Rather than complete the recommended substance-abuse evaluation, respondent, who had pleaded guilty to possession of heroin, blamed his prescription drugs for his positive drug-test results. Even in light of his incarceration, respondent did not indicate a reasonable degree of interest or concern as to J.W.'s well-being. Respondent sent only one letter between May 1, 2014, and the date of the termination hearing (March 25, 2015) to Lutheran Social Services inquiring about J.W.'s welfare. The trial court's finding respondent was unfit because he failed to demonstrate a reasonable degree of interest, concern, or responsibility for J.W.'s welfare was not against the manifest weight of the evidence.

¶ 30 B. Best-Interest Determination

¶ 31 Once a parent has been found unfit for termination purposes, the focus changes to whether it is in the best interest of the child to terminate parental rights. 705 ILCS 405/2-29(2) (West 2014); *In re D.F.*, 201 Ill. 2d 476, 494-95, 777 N.E.2d 930, 940 (2002). At the best-interest stage, a "parent's interest in maintaining 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). Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. The trial court's finding termination of parental rights is in a child's best interest will not be reversed 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 "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.

¶ 32 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 factors 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; 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

¶ 33 In this case, J.W. was in foster care shortly after he was born. As a result, he does not know a home outside of his foster family. Ketcherside testified J.W. was doing well in his foster placement and they were providing a loving and caring environment for him. Ketcherside believed J.W.'s foster parents were willing to provide permanency through adoption. That position was reinforced by the statements of the GAL at the best-interest hearing. By comparison, respondent reported his anticipated release was November 1, 2015. At that time, respondent would have to engage in and complete services and demonstrate he could provide J.W. with a suitable, drug-free environment. Based on the evidence presented, it is uncertain respondent would be able to achieve those things at any point in the near future. J.W. deserves permanency now, not uncertainty. The trial court's order finding termination of respondent's parental rights was in J.W.'s best interest was not against the manifest weight of the evidence.

¶ 34 III. CONCLUSION

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

¶ 36 Affirmed.