2015 IL App (4th) 150265-U

NOS. 4-15-0265, 4-15-0266 cons.

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: G.Z., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-15-0265)	)	No. 14JA30
BILLIE ZETTLER,	)	
Respondent-Appellant.	)	
----------	)	
In re: G.Z., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0266)	)	Honorable
LARRY ANDERS,	)	Claudia S. Anderson,
Respondent-Appellant.	)	Judge Presiding.

JUSTICE HOLDER WHITE delivered the judgment of the court.
Presiding Justice Pope and Justice Harris concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In November 2014, the State filed a petition to terminate the parental rights of respondent mother, Billie Zettler, and respondent father, Larry Anders, as to their child, G.Z. (born February 25, 2014). Following a February 2015 hearing, the trial court found respondents unfit. In March 2015, the court determined it was in the best interest of G.Z. to terminate respondents' parental rights.

¶ 3 Respondents appeal, asserting the trial court erred in finding them unfit and determining it was in G.Z.'s best interest to terminate their parental rights. For the following reasons, we affirm.

¶ 4 I. BACKGROUND

¶ 5 A. Initial Proceedings

¶ 6 In February 2014, the State filed a petition for adjudication of wardship, alleging G.Z. was neglected in that (1) his environment was injurious to his welfare due to respondent mother's mental-health issues (705 ILCS 405/2-3(1)(b) (West 2012)) (count I); (2) his environment was injurious to his welfare due to respondent mother having other children in substitute care pending the termination of her parental rights after she failed to make progress in services (705 ILCS 405/2-3(1)(b) (West 2012)) (count II); and (3) he was not receiving the necessary support or education as required by law, or medical or other remedial treatment necessary to his well-being (705 ILCS 405/2-3(1)(a) (West 2012)) (count III). In June 2014, the trial court entered an adjudicatory order finding the State met its burden as to count II only. Following an August 2014 dispositional hearing, the court (1) found G.Z. was neglected; (2) determined respondents were unfit and unable to care for G.Z.; (3) made G.Z. a ward of the court; and (4) placed guardianship of G.Z. with the Department of Children and Family Services (DCFS).

¶ 7 B. Termination Proceedings

¶ 8 In November 2014, the State filed a petition to terminate respondents' parental rights. As to Zettler, the petition alleged, among other things, she:

> "demonstrated an inability to discharge [her] parental responsibilities as supported by competent evidence from a

> psychiatrist, licensed clinical social worker, or clinical psychologist of a mental impairment, mental illness, or mental retardation, or developmental disability, and there exists sufficient justification to believe that the inability to discharge [her] parental responsibilities shall exceed beyond a reasonable period of time."

See 750 ILCS 50/1(D)(p) (West 2012). As to Anders, the petition alleged (1) he failed to maintain a reasonable degree of interest, concern, or responsibility for G.Z.'s welfare (750 ILCS 50/1(D)(b) (West 2012)); (2) he deserted G.Z. for more than three months prior to the State filing its motion to terminate his parental rights (750 ILCS 50/1(D)(c) (West 2012)); and (3) G.Z. was in the guardianship of DCFS and Anders was incarcerated in the Department of Corrections, and his repeated incarcerations prevented him from discharging his parental responsibilities for G.Z. (750 ILCS 50/1(D)(s) (West 2012)).

¶ 9 1. *Fitness Hearing*

¶ 10 In February 2015, respondents' fitness hearing commenced. The trial court took judicial notice of its October 2015 order terminating Zettler's parental rights as to three other children (Vermilion County case Nos. 10-JA-122, 123, 124). This court subsequently upheld the termination of Zettler's parental rights as to those children in *In re N.M.*, 2015 IL App (4th) 140863-U. Additionally, the court admitted as evidence the client-service plans filed in the present case. The court then heard the following testimony.

¶ 11 a. Dr. Judy Osgood

¶ 12 Judy Osgood, a licensed clinical psychologist, testified she initially evaluated Zettler in July 2011 in reference to the cases involving her other three children. She then reevaluated Zettler in June 2014 with respect to her ability to parent G.Z. and the other three

children. The purpose of the June 2014 evaluation was to determine whether Zettler's ability to parent had changed since Dr. Osgood's initial evaluation in July 2011, wherein she determined Zettler lacked the ability to discharge her parental duties. Dr. Osgood's July 2011 and June 2014 findings ultimately formed the basis upon which the trial court found, and this court affirmed, Zettler unfit as to her other three children.

¶ 13 Following her June 2014 evaluation of Zettler, Dr. Osgood noticed Zettler's symptoms of depression were less significant and less pronounced than in her earlier evaluation. However, that change did not impact Dr. Osgood's determination of Zettler's ability to parent. After personally interviewing Zettler, completing testing, and considering her earlier report, Dr. Osgood opined, "due to [Zettler's] myriad of delays, cognitive, developmental, some emotional delays, that she does not have the ability to parent [G.Z.]" Moreover, Dr. Osgood testified she did not believe Zettler could develop the ability to parent within a reasonable time period. This opinion was based on Zettler's consistent cognitive difficulties since the July 2011 exam, which demonstrated a chronic disability.

¶ 14 In support of her findings, Dr. Osgood noted multiple tests revealed Zettler had mild mental retardation, also classified as cognitive disability in the mild range. Though Zettler was more "sincere, forthcoming, [and] cooperative" during the June 2014 evaluation, Dr. Osgood found Zettler could not appreciate her cognitive limitations. This led to poor decision-making, such as her decision to enter into relationships with men who had been convicted of crimes, particularly sex offenses. Her actions were consistent with the decision-making ability of an adolescent. Dr. Osgood found no change in Zettler's adaptive functioning—the ability to adjust to her environment, care for herself, communicate, and make appropriate decisions—since the July 2011 evaluation. Dr. Osgood believed Zettler posed a high risk to herself and her children

due to her inability to grasp her own limitations and her decision to subject her children to high-risk paramours. In fact, Dr. Osgood suggested Zettler would be a good candidate for a group home for those with cognitive disabilities. Dr. Osgood conceded she had not seen Zettler interact with G.Z. or her other children; however, she maintained, to regain custody over her children, Zettler would need constant supervision from a person willing to provide primary care for G.Z.

¶ 15 b. Caseworker Michael Tolles

¶ 16 Michael Tolles, the family's caseworker through the Center for Youth and Family Solutions, testified that both parents failed to make satisfactory progress on their client-service plans.

¶ 17 As to Zettler, Tolles testified she regularly attended visits with G.Z., where she acted appropriately, played with G.Z., changed his diapers, gave him bottles, and fed him baby food. Her last visit was in October 2014, at which time the trial court entered an order requiring Zettler to comply with the service plan as a condition for future visits. Zettler also completed a developmental-counseling program and passed all of her drug screens. Additionally, Zettler secured stable financing by obtaining disability payments. Though she secured housing, she was never home when Tolles visited the residence for a safety check. Tolles testified two reasons he rated Zetter's progress unsatisfactory stemmed from her failure to complete parenting classes and her refusal to engage in mental-health treatment.

¶ 18 As to Anders, who was incarcerated prior to G.Z.'s birth and remained so throughout the pendency of the case, Tolles testified he attempted to reach out to Anders' prison counselor on multiple occasions but received no response. He provided Anders with a copy of the client-service plan, and Anders expressed an interest in maintaining his parental rights.

However, Tolles received no documentation from Anders showing completion of the services outlined in the service plan, such as (1) obtaining a sex-offender evaluation and complying with recommended treatment, (2) participating in psychotherapy, (3) obtaining a substance-abuse evaluation and complying with recommended treatment, or (4) completing parenting classes.

¶ 19 c. Zettler

¶ 20 Zettler testified she attended all of her visits with G.Z., except for two occasions when she was ill. She stated she never received any referrals for parenting classes, though she admitted refusing to participate in mental-health counseling. If granted custody, Zettler stated her maternal grandmother, Mary Brown, would provide her with assistance.

¶ 21 d. Anders

¶ 22 Anders testified, in July 2013, he received a three-year prison sentence after failing to register as a sex offender (Vermilion County case No. 13-CF-358). He had completed his prison sentence; however, he failed to submit an appropriate address for parole and, consequently, was serving his parole time in prison. He was scheduled to be released in May 2015. Anders also had a 2008 conviction for failure to register as a sex offender, for which he received probation and jail time (Vermilion County case No. 08-CF-195).

¶ 23 Anders further testified he completed five group-counseling units while incarcerated: Making Amends, Inside Out Dads, lifestyle rehabilitation, a drug symposium, and anger management. He said he engaged in these counseling sessions prior to receiving a client-service plan. Anders testified he had no independent ability to contact Tolles; as a result, he only spoke to Tolles once by phone.

¶ 24 e. Trial Court's Findings

¶ 25 After hearing the evidence, the trial court found respondents unfit. As to Zettler, the court found the State failed to prove the allegations in counts I and II. However, the court found, by clear and convincing evidence, Zettler lacked the ability to discharge her parental duties due to her cognitive disability and could not develop the necessary ability within a reasonable amount of time (count III).

¶ 26 As to Anders, the trial court found he failed to maintain a reasonable degree of interest, concern, or responsibility for G.Z., as reflected by his failure to complete any services, obtain suitable housing for parole, or attempt contact with G.Z. by mailing letters, sending gifts, or calling (count I). Additionally, the court found Anders' repeated incarcerations, in which the court included time spent both in prison and jail, prevented him from discharging his parental responsibilities (count III). However, the court found the State failed to prove Anders abandoned G.Z (count II).

¶ 27 2. *Best-Interest Hearing*

¶ 28 In March 2015, the trial court held a best-interest hearing. Tolles testified G.Z. had been with the same family since he was eight days old. G.Z. bonded with his foster family, and the foster family expressed an interest in adopting him. The family also had three biological children, and G.Z. had a close, loving relationship with the other children. The foster family also ensured G.Z. had an opportunity to visit with his biological siblings.

¶ 29 Just as in the fitness hearing, Zettler testified she would have assistance from her maternal grandmother if the trial court permitted her to have custody of G.Z. She also reiterated that she attended almost every available visit with G.Z., cancelling only twice due to illness.

¶ 30 Anders testified he expected to be released from prison in May 2015, at which time he said he would find stable housing and pursue employment. He also provided further

information on some of the classes he took while incarcerated. According to Anders, the Inside Out Dads program taught him parenting skills, while the lifestyle-rehabilitation class and Making Men program assisted him with "rehabilitating [his] life from incarceration back out to society." Additionally, he took classes to assist with anger management and substance abuse. Anders testified he engaged in these classes "because I realized the type of person that I was and how I ended up there, so I figured with all my spare time *** why not recreate the brain and start a new life, a new beginning." He stated he would be willing to take on the role of custodial parent if Zettler was unable to do so.

¶ 31 The best-interest report, filed on behalf of DCFS by Tolles, was consistent with the testimony adduced at the hearing. Additionally, the report noted G.Z. was healthy, developing ahead of most other children his age, and appeared to be happy with his foster family. DCFS and Tolles recommended the trial court terminate respondents' parental rights.

¶ 32 Following the presentation of evidence, the trial court found it was in G.Z.'s best interest to terminate respondents' parental rights. As to Anders, the court noted it would take Anders at least a year, maybe two, following his release date to complete the services necessary to gain custody of G.Z., a child with whom he had no relationship. As to Zettler, the court acknowledged, "Zettler's heart is big, and that she loves her child." Ultimately, however, "it is not reasonably anticipated [she will] be able to parent adequately or be trained to parent adequately *** within a reasonable period of time."

¶ 33 Conversely, the trial court found G.Z. had bonded with his foster family. Because the foster family provided stability—*i.e.*, permanency—respondents could not provide, the court determined it was in G.Z.'s best interest to terminate respondents' parental rights.

¶ 34 Both parties filed timely notices of appeal. We docketed Zettler's appeal as 4-15-0265 and Anders' appeal as 4-15-0266. We have consolidated respondents' cases for review.

¶ 35 II. ANALYSIS

¶ 36 On appeal, respondents argue the trial court erred in finding them unfit and determining it was in G.Z.'s best interest to terminate their parental rights. We address these arguments in turn.

¶ 37 A. Fitness Finding

¶ 38 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The court's decision is given great deference due to "its superior opportunity to observe the witnesses and evaluate their credibility." *Id.* We now turn to the finding of unfitness as to each parent.

¶ 39 1. *Zettler*

¶ 40 The trial court found Zettler unfit under section 1(D)(p) of the Juvenile Court Act of 1987 (750 ILCS 50/1(D)(p) (West 2012)), which sets forth the following grounds for a finding of unfitness:

> "Inability to discharge parental responsibilities supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist of mental impairment, mental illness or an intellectual disability as defined in Section 1-116 of the Mental Health and Developmental Disabilities Code, or developmental disability as defined in Section 1-106 of that Code,

> and there is sufficient justification to believe that the inability to discharge parental responsibilities shall extend beyond a reasonable time period."

In other words, for the court to find a parent unfit under subsection (D)(p), the State must prove (1) "the parent suffers from a mental impairment, mental illness, mental retardation, or developmental disability sufficient to prevent the discharge of normal parental responsibilities"; and (2) "the inability will extend beyond a reasonable period of time." *In re Michael M.*, 364 Ill. App. 3d 598, 608, 847 N.E.2d 911, 920 (2006).

¶ 41 In this case, Dr. Osgood testified Zettler has a cognitive disability in the mild range. This disability prevents her from appreciating her limitations as a parent, particularly with regard to her difficulties in adjusting to her environment, communicating, caring for herself, and engaging in appropriate decision-making. As an example of her poor decision-making, Dr. Osgood highlighted Zettler's tendency to enter into relationships with convicted criminals, particularly sex offenders such as Anders. As such, Zettler would have exposed G.Z. to a high-risk environment with a sex offender. Additionally, Dr. Osgood determined Zettler had not undergone a significant change in test scores or cognitive ability since her previous evaluation in July 2011, thus demonstrating her mental impairment was consistent over time and, therefore, chronic. Accordingly, Dr. Osgood opined Zettler's inability to discharge her parental responsibilities would extend beyond a reasonable time.

¶ 42 Zettler asserts Dr. Osgood provided no specific examples of how her impairment affected her ability to effectively parent her children. Zettler raised the same argument in her appeal with respect to her other children (*N.M.*, 2015 IL App (4th) 140863-U), and we continue to disagree with Zettler's assertion. Dr. Osgood specifically testified that Zettler's impairment

impeded her decision-making skills, which has resulted in Zettler entering into relationships with convicted criminals and sex offenders. Her failure to recognize how her high-risk paramours could be a threat to G.Z. demonstrates how her impairment has affected her ability to parent G.Z. Even Zettler implicitly acknowledged her inability to be the sole caregiver for G.Z. when she testified her maternal grandmother remained willing to assist her with parenting.

¶ 43 Dr. Osgood opined within a reasonable degree of psychological certainty that Zettler's cognitive dysfunction would render her unable to discharge her parental responsibilities within a reasonable time. Nothing in the record contradicts her expert opinion. Given Dr. Osgood's evaluation, which diagnosed Zettler's mental impairment and opined she would be unable to discharge her parental responsibilities within a reasonable period of time, we conclude the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 44 2. *Anders*

¶ 45 The trial court found Anders unfit on two separate grounds: (1) his failure to maintain a reasonable degree of interest, concern, or responsibility for G.Z.'s welfare (750 ILCS 50/1(D)(b) (West 2012)), and (2) his repeated incarcerations prevented him from discharging his parental responsibilities for G.Z. (750 ILCS 50/1(D)(s) (West 2012)).

¶ 46 We first examine whether the trial court's finding that Anders failed to maintain a reasonable degree of interest, concern, or responsibility for G.Z. was against the manifest weight of the evidence. A parent's interest, concern, or responsibility toward his or her child must be objectively reasonable under the circumstances. *In re J.B.*, 2014 IL App (1st) 140773, ¶ 51, 19 N.E.3d 1273. The State must only prove one of the three elements to satisfy this ground of unfitness. *Id.* Courts have found "[n]oncompliance 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" sufficient to warrant a finding of unfitness under this subsection. *In re Jaron Z.*, 348 Ill. App. 3d 239, 259, 810 N.E.2d 108, 125 (2004).

¶ 47 Here, the trial court found no evidence to indicate Anders sent letters to, bought gifts for, or attempted to contact G.Z. during his period of incarceration. Although Anders indicated an interest in remaining in G.Z.'s life, Anders failed to comply with the client-service-plan's recommendations that he obtain sex-offender evaluation and comply with recommended treatment or participate in psychotherapy. Nothing in the record even suggests he sought such services. Of the classes Anders completed, he did not send certificates of completion to Tolles for verification or to determine whether the classes would satisfy the service plan. These facts support the court's finding that Anders failed to maintain a reasonable degree of interest, concern, or responsibility for G.Z. Therefore, we conclude the court's finding of unfitness due to Anders' failure to maintain a reasonable degree of interest, concern, or responsibility toward G.Z. was not against the manifest weight of the evidence.

¶ 48 Because we have upheld the trial court's finding as to one ground of unfitness, we need not review the remaining grounds. See *In re D.H.*, 323 Ill. App. 3d 1, 9, 751 N.E.2d 54, 61 (2001) ("When multiple grounds of unfitness have been alleged, a finding that any one allegation has been proved is sufficient to sustain a parental unfitness finding.").

¶ 49 B. Best-Interest Finding

¶ 50 Respondents next assert the trial court erred in terminating their parental rights. We disagree.

¶ 51 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *Jaron Z.*, 348 Ill. App. 3d at 261, 810 N.E.2d at 126. The State must prove by a preponderance of the evidence that

termination is in the best interest of the minor. *Id*. The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62, 810 N.E.2d at 126-27.

¶ 52 The focus of the best-interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2012). The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments ***[;]
>
> * * *
>
> (e) the child's wishes and long-term goals;
>
> (f) the child's community ties, including church, school, and friends;
>
> (g) the child's need for permanence which includes the child's need for stability and continuity of relationships with parent figures and with siblings and other relatives;
>
> (h) the uniqueness of every family and child;
>
> (i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2012).

¶ 53 Here, the record demonstrates G.Z. had been with his foster family since he was eight days old and has developed a close bond with both his foster parents and his foster siblings. The foster family has expressed interest in adopting G.Z., who is both happy and healthy in his surroundings. Additionally, the foster family remained dedicated to ensuring G.Z. maintained contact with his biological siblings.

¶ 54 Conversely, respondents cannot provide the same permanency for G.Z. Anders had been incarcerated since July 2013, before G.Z.'s birth, and remained incarcerated at the time of the best-interest hearing. He had not completed his service plan, and the trial court estimated it would take Anders at least one year to fully comply with the service plan such that it would be possible to return G.Z. to him. The court found that period too extensive considering Anders did not have a relationship with G.Z.

¶ 55 Anders asserts he should have been given an opportunity for visitation despite his imprisonment so that he could develop a bond with G.Z. While, ideally, parents should be given an opportunity to bond with their children, it is difficult to envision a circumstance where it would be in an infant's best interest to be brought into a prison facility for a visit, particularly where the parent has not demonstrated any compliance with the client-service plan.

¶ 56 Zettler, likewise, is in no position to provide permanence for G.Z. Dr. Osgood noted no significant changes in Zettler's test scores or cognitive function between her July 2011 and June 2014 evaluations, demonstrating Zettler has a consistent and chronic cognitive impairment with no likelihood of change in the reasonable future that would allow her to properly parent G.Z. The trial court noted Zettler's love for G.Z., as evidenced through her

regular visits and interactions with G.Z. Unfortunately, despite her love for G.Z. and her willingness to care for him, she is unable to provide him with the permanence he needs, and her cognitive impairment would impede her ability to provide him with a safe and healthy environment.

¶ 57 Accordingly, we conclude the trial court's finding that it was in G.Z.'s best interest to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 58 III. CONCLUSION

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

¶ 60 Affirmed.