2015 IL App (4th) 150417-U

NOS. 4-15-0417, 4-15-0418 cons.

FILED
October 8, 2015
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: S.L., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v. (No. 4-15-0417)	)	No. 13JA73
ALBERT JOHNSON,	)	
Respondent-Appellant.	)	
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In re: S.L., a Minor,	)	
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0418)	)	Honorable
LATOYA LENOIR,	)	John R. Kennedy,
Respondent-Appellant.	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The circuit court's findings (1) respondent-mother was unfit under section 1(D)(m)(ii) of the Adoption Act and (2) it was in the minor child's best interest to have the parental rights of both parents terminated were not against the manifest weight of the evidence.

¶ 2 In December 2014, the State filed a petition for the termination of the parental rights of respondents, Albert Johnson and Latoya Lenoir, as to their minor child, S.L. (born in 2013). In March 2015, the Champaign County circuit court found both respondents unfit. After a May 2015 hearing, the court concluded it was in S.L.'s best interest to terminate the parental rights of both respondents.

¶ 3 Both Johnson and Lenoir appealed the circuit court's judgment, and their appeals

have been consolidated. On appeal, Johnson asserts the circuit court erred by finding it was in S.L.'s best interest to terminate his parental rights. Lenoir contends the court erred by finding (1) her unfit and (2) it was in S.L.'s best interest to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In December 2013, the State filed a petition for adjudication of wardship, which alleged S.L. was neglected pursuant to (1) section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(b) (West 2012)) in that his environment was injurious to his welfare when he resided with Lenoir because he had a medical diagnosis at birth of withdrawal symptoms from narcotics or barbiturates; (2) section 2-3(1)(c) of the Juvenile Court Act (705 ILCS 405/2-3(1)(c) (West 2012)) because he was a newborn infant, who was born with urine containing controlled substances, which were not the result of medical treatment; and (3) section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) in that his environment was injurious to his welfare when he resided with Lenoir because she had failed to correct the conditions that resulted in a prior adjudication of parental unfitness to exercise guardianship and/or custody of S.L.'s half-sibling. In February 2014, the State filed a supplemental petition, in which only count III was different from the original petition. The new count III alleged S.L. was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)) in that his environment was injurious to his welfare when he resided with Lenoir because that environment exposed him to substance abuse. At a February 27, 2014, adjudicatory hearing, respondents stipulated the minor child was neglected as alleged in count III of the supplemental petition. The circuit court accepted the stipulation and dismissed the other two counts in the supplemental petition. After an April 2014 dispositional hearing, the court found Johnson unfit, unable, and unwilling to care for S.L. and Lenoir unfit and unable to

care for S.L. The court made S.L. a ward of the court and appointed the Department of Children and Family Services (DCFS) as his guardian. On April 10, 2014, the court entered a written dispositional order.

¶ 6 On December 16, 2014, the State filed a motion to terminate both respondents' parental rights as to S.L. The motion asserted respondents were unfit because they failed to (1) make reasonable efforts within the initial nine months of adjudication to correct the conditions that triggered S.L.'s removal (750 ILCS 50/1(D)(m)(i) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)); (2) make reasonable progress toward S.L.'s return within the initial nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)); and (3) maintain a reasonable degree of interest, concern, or responsibility for S.L.'s welfare (750 ILCS 50/1(D)(b) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)).

¶ 7 On February 18, 2015, the circuit court commenced the fitness hearing. The evidence relevant to the issues on appeal is set forth below. At the hearing, the State presented the testimony of Parisha Carter, a child-welfare specialist for Lutheran Social Services of Illinois (LSSI) and the caseworker for S.L.'s case. In addition to Carter's testimony, the State requested the circuit court take judicial notice of the prior orders in this case.

¶ 8 Carter testified Lenoir admitted previously using illegal substances, including marijuana, heroin, and cocaine. Lenoir was sporadic in her compliance with random drug testing. Her sporadic participation impacted her services because LSSI had a policy that a person could not begin services until they had three clean consecutive drops and Lenoir had not achieved that. The drops she did complete were positive for 6-acetyl morphine. Carter asked her about the results, and Lenoir denied taking anything but blood-pressure medicine. Carter needed

a copy of Lenoir's prescription to give to the Prairie Center. If the Prairie Center had the prescription, then it would find the results were clean. Lenoir did provide a prescription, but the Prairie Center found it was expired and requested an updated one. Lenoir never provided a second one. Further, Carter testified Lenoir had lost her apartment and was staying at a motel or with friends. Lenoir had obtained employment in November 2014 but had failed to provide proof of employment. Moreover, Lenoir had finally obtained a substance-abuse evaluation at the Prairie Center in either December 2014 or January 2015. Carter had first made the referral for Lenoir in February 2014. The Prairie Center did not recommended any services for Lenoir. Carter had reviewed the Prairie Center's evaluation, and in her opinion, Lenoir was not fully forthcoming with the evaluator based on what Lenoir said during the LSSI integrated assessment. As to the rest of her service plan, Lenoir had not started individual counseling or a parenting class due to her failure to complete three clean drops.

¶ 9 As to Lenoir's visitation, Carter testified she was late on most occasions but usually not to the point the visit had to be cancelled. Carter explained LSSI had a policy that the visit must be cancelled when the parent was more than 15 minutes late. Carter had only cancelled one or two of Lenoir's visits for that reason. Moreover, Carter testified respondent interacted well with S.L. Lenoir was attentive to him and made sure he was fed.

¶ 10 Johnson testified Lenoir's methadone use during S.L.'s pregnancy was a low dose and supported by her doctor. Johnson also testified he provided Lenoir's transportation for visitation. In addition to his testimony, Johnson presented a letter from Melissa Tate, a maternal fetal medicine nurse practitioner, indicating Lenoir had been seen by Dr. Kehl, who discussed with Lenoir the risks of treatment with methadone and the use of heroin during pregnancy.

¶ 11 Lenoir testified she started the methadone program at the Champaign Treatment Center "a little bit" after she found out she was pregnant with S.L. In consultation with the program, she stayed on methadone throughout the pregnancy and birth of S.L. because the center felt it was the best thing for her and S.L. Lenoir stopped taking methadone two weeks after S.L.'s birth. She was never dropped from the program. Lenoir presented a copy of the Champaign Treatment Center form that she signed, which indicated she understood the possible effects of taking methadone during her pregnancy. Lenoir testified she was no longer using controlled substances.

¶ 12 As to the random drug testing, Lenoir explained that, in the beginning, she had a problem with transportation but did note the bus tokens helped her. Since getting a job, she has a hard time getting to the Prairie Center outside work hours. Lenoir also testified she takes lisinopril for high blood pressure and Jolivette for birth control. She had not provided a current copy of the prescriptions to Carter. Lenoir did present a copy of a prescription form, indicating the Jolivette could affect certain lab test results. Lenoir also testified she believed LSSI would be able to use the substance-abuse assessment she did at the beginning. Only later did she learn she had to take another one.

¶ 13 Additionally, Lenoir testified she had never been more than 10 minutes late to a visit with S.L. and noted she was not allowed to be early. According to her, the visits went well. S.L. responds to her, and she plays appropriately with him. Her visits with S.L. are once a week for an hour. Moreover, Lenoir was currently living at a Motel 6 and working at Olive Garden. She had worked at Olive Garden since September 2014. Lenoir was currently looking for work and a place to live.

¶ 14 On March 4, 2015, the circuit court heard the parties' arguments on the issue of fitness. Lenoir submitted a letter in addition to her counsel's arguments. On March 20, 2015, the circuit court entered a written order, finding Lenoir unfit under counts II and III of the termination motion and Johnson unfit on all three counts.

¶ 15 On May 13, 2015, the circuit court held the best-interest hearing. The State presented LSSI's April 2015 best-interest report. The report indicated S.L. was placed with his maternal grandmother, who also had custody of Lenoir's 13-year-old son. S.L. was doing well in his placement. Moreover, the report stated Lenoir was currently looking for housing. She had been fired from Olive Garden but had gotten a job at "Plastic Pack." Carter had not received a pay stub. Additionally, the report indicated Lenoir had not done a urine drop since September 2014. Lenoir had also been late to visitation and left 10-20 minutes early. She had also missed three visits due to work. During visits, Lenoir interacted appropriately with S.L. Johnson was incarcerated in jail and had not completed an integrated assessment. The report recommended the termination of Lenoir's and Johnson's parental rights.

¶ 16 Lenoir testified it had been three months since she did a urine drop. She had just gotten a telephone in April 2015 and had trouble receiving communications about the urine drops prior to that time. Lenoir admitted missing some visits because of her work. However, she stated she was on time for her visits and the visits were "very good." Lenoir also presented a copy of her pay stub from Plastic Container Corporation. Additionally, no parties objected to her counsel's representations that Lenoir had worked at Plastic Container Corporation since March 2, 2015, and planned to move into a two-bedroom apartment on July 1, 2015.

¶ 17 Johnson testified he had been incarcerated in the Champaign County jail since December 2014. He did not have a release date. Johnson had not visited with S.L. since his incarceration. Johnson testified he was bonded with S.L. and wanted to see him.

¶ 18 After hearing the parties' evidence and arguments, the circuit court found it was in S.L.'s best interest to terminate the parental rights of both respondents. On May 18, 2015, the court entered a written order terminating respondents' parental rights to S.L. On May 26, 2015, Lenoir and Johnson both filed timely notices of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of both appeals pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 19 II. ANALYSIS

¶ 20 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 21 Since the circuit court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427

(2001). Further, in matters involving minors, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interest determination unless it is contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005) (best-interest determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 517.

¶ 22 A. Lenoir's Fitness

¶ 23 Lenoir contends the circuit court's unfitness finding based on counts II and III of the termination motion was against the manifest weight of the evidence. The State disagrees.

¶ 24 The circuit court first found respondent unfit under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)), which provides a parent may be declared unfit if he or she fails "to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected *** minor under Section 2-3 of Juvenile Court Act." Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 25 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the relevant nine-month period was February 27, 2014, to November 27, 2014.

¶ 26 Throughout the relevant period, Lenoir lacked stable housing. She did not gain employment until September 2014 at the earliest (Carter testified Lenoir got the job in November 2014) and then did not provide the caseworker with evidence of employment. Moreover, the caseworker's requirement of drug testing was neither unreasonable nor unnecessary considering

Lenoir's lengthy history of substance abuse, the reason for S.L's removal, and Lenoir's stopping methadone, which is a treatment for opiate use, two weeks after S.L.'s birth. We also note Lenoir had left the Champaign Treatment Center before the nine-month period at issue began. Despite knowing the significance of clean drug test results, Lenoir missed numerous urine drops throughout the initial nine-month period and the ones she did complete were positive. While the positive results could have been the result of valid prescriptions, Lenoir never provided a current prescription to Carter so the Prairie Center could determine whether the drops were in fact clean. Lenoir's failure to complete three clean drops resulted in her not even receiving a referral for individual counseling and a parenting class. Also, Lenoir did not complete the substance-abuse evaluation until after the relevant time period. Based on the aforementioned facts, Lenoir was not close to fulfilling directives and having S.L. returned to her in the near future during the relevant nine-month period. Accordingly, we find the circuit court's finding of unfitness based on Lenoir's failure to make reasonable progress toward S.L.'s return during the initial nine-month period after the neglect adjudication was not against the manifest weight of the evidence.

¶ 27 Because we have upheld the circuit court's finding that respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West Supp. 2013) (as amended by Pub. Act 98-756, § 750 (eff. July 16, 2014)), we need not review the second basis for the court's unfitness finding. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 28 B. S.L.'s Best Interest

¶ 29 Both Johnson and Lenoir challenge the circuit court's best-interest finding. The State contends the court's finding was proper.

¶ 30 During the best-interest hearing, the circuit court focuses on "the child's welfare

and whether termination would improve the child's future financial, social and emotional atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 31 We note a parent's unfitness to have custody of a child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of the respondents' parental rights is in the minor's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 32 In this case, S.L. had resided with his maternal grandmother and his half-brother since his release from the hospital when he was two months old. He was doing well in his

placement, and his grandmother desired to help with his care. Johnson could not care for S.L. as he had been incarcerated in jail for five months. Moreover, S.L. had not visited with Johnson during his incarceration. Before his incarceration, Johnson had failed to even complete the initial assessment to receive services. Thus, regardless of incarceration, Johnson was not close to providing a stable home for S.L. Lenoir was also not close to being able to provide a stable home for S.L. as she still struggled with stable housing and employment due to her changing jobs and living in a hotel. Moreover, Lenoir was still not complying with drug testing and taking advantage of all of her visitation time with S.L. In this case, the relevant section 1-3(4.05) factors favor the termination of the parental rights of both respondents. Accordingly, we find the circuit court's conclusion it was in S.L.'s best interest to terminate respondents' parental rights was not against the manifest weight of the evidence.

¶ 33 III. CONCLUSION

¶ 34 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 35 Affirmed.