2015 IL App (5th) 150086-U

NO. 5-15-0086

IN THE

APPELLATE COURT OF ILLINOIS

FIFTH DISTRICT

In re A.M. and R.M., Minors	)	Appeal from the
	)	Circuit Court of
(The People of the State of Illinois,	)	Madison County.
	)	
Petitioner-Appellee,	)	
	)	Nos. 11-JA-21 & 11-JA-22
v.	)	
	)	
R.M.,	)	Honorable
	)	David Grounds,
Respondent-Appellant).	)	Judge, presiding.

JUSTICE CHAPMAN delivered the judgment of the court.
Presiding Justice Cates and Justice Goldenhersh concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's determination that respondent was an unfit parent and that it was in the minor's best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 2 Respondent, R.M., appeals the order of the circuit court of Madison County that found it was in the best interest of the minors, A.M. and R.M., to terminate respondent's parental rights. On appeal, respondent, mother, argues that the court's determination was contrary to the manifest weight of the evidence. For the following reasons, we affirm.

¶ 3 BACKGROUND

¶ 4 On January 31, 2011, the State filed a petition for adjudication, alleging that the minors were neglected and abused according to section 2-3(1)(b) of the Juvenile Court Act of 1987 (705 ILCS 405/2-3(1)(b) (West 2010)). The State filed an amended petition on February 10, 2011, in which it alleged that the minors were abused and neglected in that they were in an environment injurious to their welfare; that their parents had failed to take reasonable steps to protect them from domestic violence; that their parents did not provide proper or necessary support, education, or medical care; that A.M. had injuries to her ear including deep bruising, for which the parents could give no plausible explanation; that the parents had an open case with the Department of Children and Family Services (DCFS) since December 12, 2010, due to domestic violence in the home; and that the mother had been charged with aggravated battery of a child.

¶ 5 The court entered an adjudicatory order on January 26, 2012, finding that the minors were neglected due to (1) lack of support, education, and remedial care, (2) being in an environment injurious to their welfare, and (3) being at substantial risk of abuse. The court entered a dispositional order on March 26, 2013, finding both parents to be unfit on the basis of not successfully completing their service plans. The court designated the minors as wards of the court and granted guardianship to DCFS.

¶ 6 On August 9, 2013, the State filed a petition to terminate respondent's parental rights, as well as the rights of the father, Ronald. The father does not appeal the termination of his rights. We make reference to some of the relevant findings in his case, as at the time of the termination hearing, he and respondent were still living together as a

couple and had future plans to continue living together if respondent regained custody. The petition to terminate alleged that respondent was an unfit parent pursuant to section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)) in that (a) she failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors; (b) she failed to make reasonable progress toward the return of the minors to her within nine months after an adjudication of abuse and neglect; (c) she failed to make reasonable progress toward the return of the minors to her during any nine-month period after the end of the initial nine-month period following the adjudication of abuse and neglect; and (d) she was unable to discharge her parental responsibilities because of mental impairment, mental illness, or an intellectual disability, supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist, and there was sufficient justification to believe that the inability to discharge parental responsibilities will extend beyond a reasonable period of time.

¶ 7 On June 23, 2014, the court held a hearing on the petition to terminate respondent's parental rights. At the time of the hearing, R.M. was seven years old and A.M. was five years old. The State's first witness was Kimberly Monk, the minors' DCFS caseworker from October 2011 to April 2014. Monk's testimony and reports are summarized as follows. She testified that the children first came into the protective custody of DCFS following an unexplained injury to A.M.'s ear which required hospital treatment. Respondent was subsequently charged with aggravated battery to a child. Respondent gave several inconsistent stories of what happened to A.M. At one point, she confessed to police that she hurt A.M. She later claimed that the confession was coerced.

(It is unclear as to the eventual outcome of the charges. It is reported in the DCFS file that she pled guilty; however, objections to any reference to a guilty plea was sustained at trial.)

¶ 8 In order for respondent to regain custody of her children, respondent was required to satisfactorily complete DCFS service plans. Respondent's service plans required her to participate in mental health counseling, domestic violence counseling, and parenting counseling. Monk explained that in order to obtain a "satisfactory" rating, the parent must be able to indicate knowledge of the materials being discussed and act accordingly. Respondent was unable to achieve satisfactory progress in any of these areas over a three-plus-year period.

¶ 9 Monk further testified that respondent told her that she suffered from depression. Respondent was required to obtain a mental health assessment but did not do so. Respondent did, however, obtain a psychological assessment. Respondent did not consistently take her depression medication or her diabetes medication.

¶ 10 During supervised DCFS visitation with the minors, respondent and her husband would often argue, which would upset the minors. One time, the husband brought his girlfriend to a DCFS visitation which greatly upset respondent. At other visitations, friends and other family members would show up. Eventually, DCFS required separate, individual supervised visitations. At visitations, respondent was required to provide nutritious food for the minors. She would give them potato chips, candy, and cookies. A.M. would become ill from all the junk food respondent provided.

¶ 11 The State also presented testimony of Dr. Marilyn Frey, a board-certified clinical psychologist. Dr. Frey's testimony and reports are summarized as follows. On March 9, 2013, Dr. Frey performed a psychological evaluation and a parenting capacity evaluation on respondent. Dr. Frey testified that respondent had a full-scale tested I.Q. of 70, indicating "high cognitively limited to borderline intelligence." Respondent's I.Q. score places her in 2% of the population. Dr. Frey believed respondent to be quite depressed with very low self-esteem. Respondent was also very codependent on her husband. Dr. Frey's assessment of the children's father was that he had a full-scale I.Q. score of 72, that he had a number of psychological factors that severely limited his ability to parent, and that he did not even meet a minimum parenting standard. This codependency put her and her children at risk of harm whenever her husband's behavior escalated to violence. It was Dr. Frey's opinion that respondent's codependent need was greater than her ability to protect her children from harm. Dr. Frey's prognosis for respondent's ability to parent was guarded and she did not believe that respondent would be able to independently parent A.M. and R.M. anytime in the near future.

¶ 12 The State presented further testimony from a therapist, a family support specialist, a parenting coach, and an additional permanency child welfare specialist. We do not summarize their testimony as it was cumulative of the State's primary witnesses' testimony. Respondent testified on her own behalf and argued that she was competent to parent her children and would know what to do in a domestic violence situation.

¶ 13 The court found respondent to be unfit because (1) she failed to make reasonable progress toward the return of the minors to her during any nine-month period following

an adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) in that at no point in the life of the case had she received a satisfactory rating on any service plan, and (2) she was unable to discharge her parental responsibilities because of mental impairment, mental illness, or intellectual disability, supported by competent evidence from a psychiatrist, licensed clinical social worker, or clinical psychologist and there was sufficient justification to believe that the inability to discharge her responsibilities will extend beyond a reasonable amount of time (750 ILCS 50/1(D)(p) (West 2012)).

¶ 14 On February 20, 2015, the case proceeded to a best-interest hearing. The State's first witness was Randy Kuehn, the permanency caseworker most recently assigned to A.M. and R.M.'s case. Kuehn prepared a comprehensive eight-page best-interest report. His testimony and report are summarized as follows. At the time of the hearing, A.M. was six and R.M. was nine. Initially they were placed in a traditional foster home but were removed from that home because the foster family believed they were being harassed by the children's biological family. On August 29, 2013, the children were then placed in another traditional foster home with Ronald and Shauna Quick. The children have been with the Quicks since that time. The Quicks have an eight-year-old biological daughter. Ronald Quick is a school counselor and Shauna is a nurse practitioner.

¶ 15 Both A.M. and R.M. have developmental delays. R.M. has difficulty with his speech, math, and his fine motor skills, but with continued therapy while living with the Quicks, he has greatly improved. A.M.'s speech and fine motor skills have improved with continued therapy as well. The Quicks take the children to all of their appointments.

¶ 16 A.M. and R.M. refer to Ronald and Shauna as "dad" and "mom," and they call Ronald and Shauna's biological daughter their sister. They go on trips as a family, interact with extended family, and are enrolled in extracurricular activities. The Quicks have expressed a desire to adopt A.M. and R.M. The children have indicated that they want to remain with the Quicks.

¶ 17 Kuehn also testified about the children's interactions with respondent. Respondent consistently attended visitation with the children. She was not permitted to have unsupervised visits with the children because the caseworkers determined it was not safe to do so. While the children were excited to visit with respondent, visitations were frantic, and the children were unresponsive to directives from respondent. A.M. would often get sick after visitations because respondent would give A.M. too much junk food.

¶ 18 Kuehn testified that he had not seen or read anything in the reports that indicated any improvement in respondent's ability to parent. His report stated that respondent's failure to progress with mental health, anger management, domestic violence, and parenting effectiveness services clearly demonstrated her inability to effectively parent. He further stated that domestic violence was an ongoing problem despite attempts at treatment. He stated that respondent had once reported an incident in 2010 where she had hit her husband with a frying pan after he had choked her. Kuehn's report indicates in April 2014 both respondent and the father admitted to ongoing domestic violence incidents. The husband reported in May 2014 that respondent punched him in the face. Respondent was discharged negatively from domestic counseling in July 2014. The

counselor had determined that continued treatment was unlikely to be productive. In October 2014, the husband again reported that respondent punched him in the face.

¶ 19 Kuehn further testified that the case had been ongoing for the past four years and that the children need permanency. He believed that the Quicks provided both the permanency and stability the children needed. His opinion was that it would be in the children's best interest if respondent's parental rights were terminated.

¶ 20 ANALYSIS

¶ 21 The circuit court found respondent unfit on two bases. The first basis was that she was unable to discharge her parental responsibilities because of mental impairment, mental illness, or intellectual disability, as demonstrated by competent evidence from a clinical psychologist, and there was sufficient justification to believe the inability to discharge her parental responsibilities will extend beyond a reasonable time period. In order for the circuit court to find unfitness on this basis, the State was required to prove that (1) respondent suffers from a mental impairment, mental illness, an intellectual disability, or developmental disability sufficient to prevent the discharge of normal parental responsibilities, and (2) the inability will extend beyond a reasonable period of time. 750 ILCS 40/1(D)(p) (West 2010).

¶ 22 The State presented the testimony Dr. Frey, a board-certified clinical psychologist, who testified that respondent had an I.Q. of 70. She had a below-average ability to suppress her anger. She suffered from depression to the degree that it adversely affected her ability to parent, had an adaptive functioning level indicative of incompetency, and had severe codependency issues to the degree that Dr. Frey was not certain that

respondent could protect her children or herself if the behavior of the children's father escalated to violence. With respect to respondent's parenting style, Dr. Frey testified that though respondent made her best effort, she seemed completely incapable of controlling A.M. Dr. Frey did not believe respondent could effectively parent her children in the foreseeable future because of her low I.Q., her codependent relationship with the children's father, and her inability to control A.M.'s behavior.

¶ 23 Respondent questions the validity of Dr. Frey's opinions because she only observed respondent and the children for 1½ hours. We believe that the alleged brevity of Dr. Frey's observations does not so undermine her opinion that the State's allegations of mental impairment was unsupported, or render the circuit court's determination that respondent was unfit, contrary to the manifest weight of the evidence. Furthermore, Dr. Frey spent 4-5 hours giving respondent a variety of psychological tests and spent additional time reviewing the DCFS case file on respondent. The court did not err when it found respondent unfit on that basis.

¶ 24 The second basis the court found respondent unfit under was her failure to make reasonable progress during any nine-month period following an adjudication of neglect or abuse. When a court considers the reasonable progress a parent has made towards reunification with the children, it uses an objective test. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006). The court considers the parent's compliance with service plans and court directives in light of the conditions that gave rise to the children being removed in the first place, as well as other conditions that became known to the court later and would prevent it from allowing the children to be reunited with the parents. *Id.*

Reasonable progress exists when the court can conclude that it will be able to order the reunification of the parent and child in the near future. *Id*.

¶ 25 In this case, the children were taken into foster care in January 2011. They were adjudicated neglected on January 26, 2012. At the fitness hearing, Monk, the DCFS caseworker from October 2011 to April 2014, testified that she had prepared a service plan for respondent which required her to participate in parenting, mental health, and domestic violence counseling. For each six-month case review of the service plans, respondent received an unsatisfactory rating. To achieve a satisfactory rating, respondent needed to participate in classes and implement the knowledge she gained in those classes. She did not do so. Furthermore, she was involved in additional domestic violence with her husband during the case; failed to obtain stable housing; would discontinue the use of her psychotropic medication; and would not take her diabetes medication consistently. And while respondent did attend the required classes, she did not implement the skills and knowledge she learned when it came to caring for herself and for her children. Respondent's service plan reviews, respondent's inability to provide safe and appropriate care for her children, and respondent's continued issues with domestic violence show that she did not make reasonable progress during any nine-month period, and thus we affirm the circuit court's finding unfitness on this basis.

¶ 26 If the trial court finds the parent to be unfit, the court must then determine whether it is in the child's best interest that parental rights be terminated. 705 ILCS 405/2-29(2) (West 2012). At this stage, the focus of the court's scrutiny shifts from the rights of the parent to the best interest of the child. *In re B.B.*, 386 Ill. App. 3d 686, 697 (2008). To

terminate parental rights, the State bears the burden of proving by a preponderance of the evidence that termination is in the minor's best interest. *In re D.T.*, 212 Ill. 2d 347, 366 (2004). When determining whether termination is in the child's best interest, the court must consider, in the context of a child's age and developmental needs, the following factors: (1) the child's physical safety and welfare, (2) the development of the child's identity, (3) the child's background and ties, including familial, cultural, and religious, (4) the child's sense of attachments, including love, security, familiarity, and continuity of affection, and the least-disruptive placement alternative, (5) the child's wishes, (6) the child's community ties, (7) the child's need for permanence, including the need for stability and continuity of relationships with parental figures and siblings, (8) the uniqueness of every family and child, (9) the risks related to substitute care, and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012). A trial court's determination that termination of parental rights is in the child's best interest will not be disturbed on review unless it is contrary to the manifest weight of the evidence. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). A decision is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the lower court's determination is unreasonable, arbitrary, or not based on the evidence presented. *Id.*

¶ 27 A.M. and R.M. had been in foster care with the Quicks since 2013. The Quicks had prior experience as foster parents. Both children were thriving. They arrived in foster care with special needs, primarily developmental delays in speech and motor skills. Through continuous therapy, they have made considerable progress. They refer to

Ronald and Shauna as "dad" and "mom." They get along with the Quicks' biological daughter. R.M. attends school. They go on family trips and spend time with the Quicks' extended family. Both children appear to be happy and wish to remain with the Quicks, and the Quicks expressed a desire to adopt A.M. and R.M.

¶ 28 Respondent was unable to control the children at visitation. They were hyperactive, frantic, and unresponsive to any parental direction. Respondent was unable to provide for the safety and basic welfare of her children. Respondent had not obtained appropriate housing or employment. Respondent intended to remain with her husband, the father of A.M. and R.M., if she was reunited with her children. The father was found unfit and his rights terminated. He has not appealed this finding. Respondent and her husband's pattern of ongoing domestic violence had not been resolved. The minors need permanency and stability, which respondent cannot provide.

¶ 29 For all the above reasons, we find the court did not err when it determined that it was in the minors' best interest to terminate respondent's parental rights.

¶ 30 CONCLUSION

¶ 31 For the foregoing reasons, the judgment of the circuit court of Madison County is affirmed.

¶ 32 Affirmed.