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2016 IL App (3d) 150620-U

Order filed January 21, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

In re A.S.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois,
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-15-0620
	)	Circuit No. 12-JA-262
v.	)	
	)	
Ronald S.	)	
	)	The Honorable
Respondent-Appellant).	)	Timothy J. Cusack,
	)	Judge, presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices Holdridge concurred in the judgment.
Justice McDade dissented.

ORDER

¶ 1 *Held*: Trial court's finding that father failed to make reasonable progress toward return of his child during relevant nine-month period was not against manifest weight of the evidence where father failed to complete many required drug drops and admitted using illegal drugs.

¶ 2 The trial court entered orders finding respondent Ronald S. to be an unfit parent and terminating his parental rights to his child, A.S. On appeal, respondent argues that the court erred when it found that he was unfit for failing to make reasonable progress toward the return of A.S. to his care during the nine-month period between March 2 and December 2, 2014. We affirm.

¶ 3 FACTS

¶ 4 On October 18, 2012, a juvenile petition was filed alleging that A.S., who was seven weeks old, was neglected by reason of an injurious environment. The petition alleged that respondent and A.S.'s mother were involved in a domestic violence incident in which respondent struck A.S.'s mother in the face and pulled her hair. When the police arrived, they found cannabis and drug paraphernalia in the residence and a pipe on respondent's person. Respondent told the police that A.S.'s mother struck him in the face after he refused to buy her more drugs. A.S. was in the home at the time of the incident.

¶ 5 Among other allegations, the petition also alleged that the minor's mother had a substance abuse problem and tested positive for cannabis, cocaine, and hydrocodone (for which she did not have a prescription). The petition alleged that respondent tested positive for cannabis. Respondent and A.S.'s mother stipulated to the allegations in the juvenile petition, and the trial court adjudicated A.S. neglected.

¶ 6 On January 15, 2013, the court entered a dispositional order finding respondent to be an unfit parent based on "substance/drug use, [and] domestic violence." A.S.'s mother was also found unfit, and A.S. was made a ward of the court with guardianship given to the Department of Children and Family Services (DCFS), which also received the right to place the minor. The court ordered respondent to complete numerous tasks, including (1) executing all authorizations

for releases of information requested by DCFS or its designees, (2) cooperating fully with DCFS and its designees, (3) obtaining a drug and alcohol assessment and following any associated recommendations, (4) completing two random drug drops per month, (5) obtaining and maintaining suitable housing, (6) notifying DCFS or its designees of any household changes or information on individuals with whom the respondent had a relationship that affected the minor, and (7) visiting A.S.

¶ 7 After several permanency review hearings were held and respondent was assessed on his service plan tasks, the State filed a petition to terminate the parental rights of respondent and A.S.'s mother. Count II of the petition alleged that respondent failed to make reasonable progress toward the return of A.S. to his care during the nine-month period between March 2, 2014, and December 2, 2014.

¶ 8 A report filed in June 2014 for a permanency review hearing indicated that respondent had successfully executed all requested authorizations, was cooperative and "pleasant" with DCFS and its designees, and had successfully completed a drug and alcohol assessment. Respondent was living in a four-room trailer that was in need of significant repairs, but respondent's landlord was working to complete them. Respondent lived alone but had a girlfriend and did not provide A.S.'s caseworker with any information about her.

¶ 9 According to the report, respondent was not successfully completing his required random drug drops. In March 2014, he completed only one drop, which returned a negative result. However, he failed to perform any of the other five required drops from March to May 2014. The caseworker also noted problems with respondent's visitation with A.S., stating that respondent did not come prepared for the visits and relied on A.S.'s mother to bring food and

diapers. The caseworker also noted that respondent "does not check [A.S.'s] diaper unless he is asked by staff to do so."

¶ 10 The caseworker evaluated respondent on his service plan tasks again in September 2014. The caseworker gave respondent an unsatisfactory rating for visitation because, while he was attending weekly visits with A.S., he still needed assistance from the caseworker and other agency workers to check A.S.'s diaper and correctly place him in a car seat. Respondent also struggled with nurturing and showing affection to A.S.

¶ 11 The caseworker noted that respondent completed a domestic violence class and did not fight back on July 6, 2014, when A.S.'s mother entered onto his property and began hitting him. Respondent completed a drug and alcohol assessment on April 30, 2014, and was following the assessment's recommendations. However, respondent was still failing to consistently perform his drug drops. He completed a drop on March 19, 2014, which produced a negative result, but he missed all of his drops in April, May, and June. He completed a drop on July 21, 2014, which produced a negative result, but he did not complete his September 3, 2014, drop.

¶ 12 A report filed in November 2014 for a permanency review hearing indicated that although respondent was cooperative and had his residence repaired so that it was now considered suitable, he continued to have problems demonstrating appropriate parenting skills and was not regularly performing his drug drops. Between June and October 2014, the respondent completed only 4 out of 10 required drug drops.

¶ 13 On June 17, 2015, the circuit court held a hearing on the termination petition. Angela Venzon testified that she was A.S.'s caseworker until August 5, 2014. She set up bus transportation for respondent to use to travel to his drug drops, but he preferred to use his father

as his means of transportation. Venzon testified that respondent regularly attended visitation, but he "required a lot of coaching during his visits as far as how to meet the needs of his child."

¶ 14 Chelsea Smalley testified that she had been A.S.'s caseworker since August 5, 2014. She testified that respondent only performed 4 out of 10 random drug drops between June and December 2014. She testified that respondent completed a counseling program before the relevant nine-month period but had been re-referred due to concerns the agency still had regarding his ability to parent on his own. Respondent had been regularly attending that counseling program until the service was ended due to the change in permanency goal.

¶ 15 Respondent testified that he believed that his visits with A.S. went well and that there were no problems. He stated that he did not have to change A.S.'s diaper because A.S.'s mother had visitation before him. He testified that he used marijuana during the relevant nine-month period. When asked about the frequency of his use, respondent stated, "[q]uite a bit." He testified that his drug use was one of the reasons he did not perform required drug drops.

¶ 16 At the close of the hearing, the trial court ruled that the State proved by clear and convincing evidence that respondent was unfit based on his failure to complete the required drug drops. The court explained:

> "[T]he father's done, frankly, everything he has needed to do and everything that's in his, within his capabilities, but then we have the failure to take the drops. The drops are probably the easiest thing that you could have done, but you failed to do them.
>
> You know, again, you made the repairs to the house. You completed all the counseling as requested. You went to the visits, and, apparently, you did the best you could at the visits also. The drops are problematic though. Those you

> show up – well, frankly, it is easy to do. You stop doing drugs and you take the drops and then this petition gets dismissed against you. That's pretty simple.
>
> The State's argument is that without you even doing the drops, there's no idea what was in your system ***, and that's the only thing that bothers me. Otherwise, you did absolutely everything you needed to do.
>
> I think at the end of the day if I'm going to error [*sic*], I have to error [*sic*] on the side of [A.S.] at this time, and without knowing what kind of drugs you were doing during this period of time and without knowing that that problem has been addressed fully, I will find that by clear and convincing evidence the State has *** proven Count II [of the termination petition]."

After a best-interest hearing, the court found that it was in the minor's best interest to terminate respondent's parental rights.

¶ 17 ANALYSIS

¶ 18 On appeal, respondent argues that the trial court erred when it found that he failed to make reasonable progress toward the return of A.S. to his care within the nine-month period between March 2 and December 2, 2014.

¶ 19 One ground upon which parental unfitness can be based is a parent's failure to make reasonable progress toward the return of the minor to his or her care within any nine-month period following the adjudication of the minor as abused or neglected. 750 ILCS 50/1(D)(m) (West 2014). When a service plan has been established, section 1(D)(m) of the Adoption Act provides that a failure to make reasonable progress includes "the parent's failure to substantially fulfill his or her obligations under the service plan and correct the conditions that brought the child into care" during the relevant nine-month period. *Id*; see also *In re C.N.*, 196 Ill. 2d 181,

216-17 (2001) (holding that "the 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 become known and which would prevent the court from returning custody of the child to the parent"). "Continued use of illegal drugs *** evidence[s] 'the opposite of reasonable progress' and constitute[s] [a] condition*** which would prevent the court from returning custody of the child to the parent." *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046 (2007) (quoting *In re S.E.*, 296 Ill. App. 3d 412, 415 (1998)).

¶ 20 In reviewing cases of parental unfitness, we are limited to determining whether the trial court's decision was against the manifest weight of the evidence. *In re M.S.*, 302 Ill. App. 3d 998, 1002 (1999). We are not to substitute our judgment for that of the trial court but are to decide whether there was sufficient evidence to justify the trial court's judgment. *Id.* A decision is against the manifest weight of the evidence only when the opposite conclusion is clearly evidence. *In re C.N.*, 196 Ill. 2d at 208.

¶ 21 In this case, the evidence showed that while respondent made reasonable progress on many of his service plan tasks, he failed to demonstrate adequate parenting skills during his visits with A.S. and failed to perform more than half of his required drug drops. During the relevant nine-month period between March 2, 2014, and December 2, 2014, respondent completed only 5 out of 15 required drug drops. While the drops respondent completed were negative for drugs, respondent admitted that he had used marijuana "[q]uite a bit" during the relevant nine-month period. He also admitted that his drug use was one of the reasons he did not complete many of the required drops.

¶ 22 Drug use was one of main reasons that A.S. was removed from respondent's care. Respondent's repeated failure to complete drug drops and his admitted use of illegal drugs support the trial court's ruling that respondent failed to make reasonable progress toward the return of A.S. to his care during the relevant nine-month period. We affirm the trial court's finding of unfitness.

¶ 23 CONCLUSION

¶ 24 The judgment of the circuit court of Peoria County is affirmed.

¶ 25 Affirmed.

¶ 26 JUSTICE McDADE, dissenting:

¶ 27 I respectfully dissent from the majority's ruling that the respondent failed to make reasonable progress during the relevant nine-month period.

¶ 28 In this case, there is no question that the respondent made reasonable progress on almost all of his service plan tasks. Indeed, that is the gist of the trial court's comments. He cooperated fully—and pleasantly—with DCFS. He performed the assessments, completed the classes, attended visitation regularly, worked with his landlord to fix up his residence, and demonstrated that he had made progress with his domestic violence issues. Because DCFS was not completely satisfied with aspects of his parenting during visitation, he signed up for another parenting class to improve his interaction with the minor. And unlike the situation in many of our cases, his were not last ditch efforts made before a fitness hearing, but were ongoing throughout the time the child was removed from his custody. His one failure pertained to his drug-drop task -- the most difficult because it required him to overcome addiction. During the relevant nine-month period, the evidence indicated that the respondent completed 5 of 15 random drug drops. While this is not perfect progress, the standard does not require perfection. I acknowledge that the

respondent admitted that he had used "[q]uite a bit" of marijuana during the relevant nine-month period; however, all five of the completed drug drops were requested and secured on dates selected at random, and all five produced negative results—presumably indicating among the test results an absence of residual tetrahydrocannabinol (THC) in his urine. Furthermore, while it is true that drug use was one of the two main reasons the minor was removed from the respondent's care, the respondent reasonably progressed on his tasks related to the other main reason for the minor's removal—domestic violence. The respondent's progress on that issue included him not fighting back in July 2014 when the minor's mother entered onto the respondent's property and began hitting him.

¶ 29 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re D.F.*, 201 Ill. 2d 476, 494-95 (2002). "The law is well settled that clear and convincing evidence requires a high level of certainty." *In re Marriage of Wechselberger*, 115 Ill. App. 3d 779, 786 (1983). " 'Clear and convincing evidence' means evidence greater than a preponderance of the evidence but not quite as high as the evidence necessary for a criminal conviction." *Board of Trustees of University of Illinois v. Illinois Educational Labor Relations Board*, 2015 IL App (4th) 140557, ¶ 36. Here, the circuit court noted that the respondent had done everything that he needed to do to have the petition dismissed, except for his drug drops. The court then stated that if it had to err, it would err on the side of the minor. Such a statement does not indicate a showing of unfitness by clear and convincing evidence. Under these circumstances, I would hold that the manifest weight of the evidence indicated that the respondent had in fact made reasonable progress toward the return of the minor to his care during the relevant nine-month period. I would therefore hold that the circuit court's ultimate unfitness determination was contrary to its own assessment of the manifest weight of the evidence before

it and was, therefore, erroneous. Accordingly, I would also reverse the court's best-interest determination.

¶ 30 For the foregoing reasons, I respectfully dissent from the majority's decision.