2016 IL App (3d) 150663-U

Order filed February 8, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

A.D., 2016

In re D.R., E.R., M.R., A.R., and Sy.D.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
Minors	)	Peoria County, Illinois.
	)	
(The People of the State of Illinois,	)	Appeal Nos. 3-15-0663
	)	3-15-0664
Petitioner-Appellee,	)	3-15-0665
	)	3-15-0666
v.	)	3-15-0667
	)	Circuit Nos. 10-JA-316
S.D.,	)	10-JA-317
	)	10-JA-318
Respondent-Appellant).	)	10-JA-319
	)	12-JA-284
	)	
	)	Honorable Albert L. Purham,
	)	Judge, Presiding.

JUSTICE SCHMIDT delivered the judgment of the court.
Presiding Justice O'Brien and Justice Carter concurred in the judgment.

ORDER

¶ 1 *Held*: We affirm the trial court's termination of respondent's parental rights. The court's finding that respondent failed to make reasonable progress toward the return of the minors was not against the manifest weight of the evidence.

¶ 2 Respondent, S.D., has a documented history of domestic violence and substance abuse. As a result, the State filed separate juvenile neglect petitions against respondent as to her four children, D.R. (born August 20, 2003), A.R. (born October 5, 2005), E.R. (born September 6, 2006), and M.R. (born September 21, 2007). The court subsequently found respondent unfit and ordered her to complete several basic tasks in order to demonstrate her fitness as a parent. The State later proved the neglect petitions by a preponderance of the evidence. Shortly thereafter, respondent gave birth to another minor, Sy.D. (born November 9, 2012). Sy.D. was promptly adjudicated a neglected minor. Again, the court found respondent unfit and ordered her to complete several tasks to indicate her fitness as a parent.

¶ 3 Two years later, the State filed a petition to terminate respondent's parental rights to all of the minors. The State alleged that respondent was unfit as defined in section 1(D)(m)(iii) of the Adoption Act (750 ILCS 50/1(D)(m)(iii) West 2014)). Specifically, the State argued that respondent failed to make reasonable progress toward the return of the minors during a specified nine-month period after the minors were adjudicated neglected. The trial court found respondent failed to make reasonable progress in the specified time period, deemed her unfit, and subsequently terminated her parental rights.

¶ 4 Respondent appeals, arguing the trial court's finding that she failed to make reasonable progress in the specified nine-month period was against the manifest weight of the evidence.

¶ 5 BACKGROUND

¶ 6 I. Events Prompting the State's Motion to Terminate Parental Rights

¶ 7 In November 2010, the State filed separate petitions for adjudication of wardship, alleging that D.R., A.R., E.R., and M.R. were neglected minors under section 2-3 of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3 (West 2010)). DCFS took protective

custody of the minors at that time. The State's petitions stemmed from respondent's consistent pattern of domestic violence and substance abuse.

¶ 8 Between March 2007 and October 2010, police responded to at least seven incidents of domestic violence involving respondent and multiple partners. In one incident, police arrested respondent for stabbing her then-boyfriend, now husband, A.D. Respondent agreed to a Department of Children and Family Services (DCFS) safety plan to keep A.D. away from the minors. A month later, respondent let A.D. in her residence while one of the minors was present. Respondent's primary partners throughout the documented domestic violence incidents, M.H. and A.D., also have criminal histories. Respondent declined to initiate or follow through with obtaining orders of protection against these individuals. Additionally, the respondent abuses alcohol.

¶ 9 The trial court issued an adjudication order in January 2011, based on respondent's stipulation to the charges of neglect. The court found respondent unfit based on the contents of the petition at the dispositional hearing in February 2011. The trial court made the minors wards of the court and appointed DCFS guardian. In November 2012, the trial court found the State's petition was proven by a preponderance of the evidence.

¶ 10 The trial court ordered respondent to: participate in a psychological evaluation; participate in a psychiatric evaluation; execute all authorizations for release of information; cooperate with DCFS (or its designee); obtain a drug and alcohol assessment; follow any recommended treatment derived from the drug and alcohol assessment; submit to two random tests for narcotics and Breathalyzers per month; participate and successfully complete a parenting course; participate and successfully complete a domestic violence course; maintain

stable housing suitable for the minors; visit the minors; and keep her caseworker up to date on changes of address, contact information, or significant relationships.

¶ 11 Respondent gave birth to a fifth minor, Sy.D., in November 2012. Four days after her birth, Sy.D. went into protective custody. In March 2013, the trial court adjudicated Sy.D. a neglected minor on the same grounds as the other minors. The trial court again found respondent unfit the following month; the trial court ordered her to complete a list of services and obligations similar to those ordered in the proceedings with the other four minors. The minors' remaining biological parents have no parental rights.

¶ 12 In November 2014, the State filed a petition to terminate respondent's parental rights to all of the minors pursuant to the Adoption Act (750 ILCS 50/1(D) (West 2014)). The State alleged that respondent was unfit as defined in section 1(D)(m)(iii) (750 ILCS 50/1(D)(m)(iii) (West 2014)). Specifically, the State alleges that respondent failed to make reasonable progress toward the return of the minors to her from December 8, 2013, to September 8, 2014.

¶ 13 II. The Fitness Hearings

¶ 14 The trial court consolidated the petitions. Respondent's fitness hearings were in March 2015 and June 2015. At the hearings, the State submitted several exhibits—including respondent's 2011 psychological and psychiatric evaluation reports. The psychological evaluation report diagnosed respondent with a mood disorder and a personality disorder. The psychologist recommended that she complete classes in domestic violence, parenting, and anger and stress management. The psychiatric evaluation report concurred with the psychological evaluation report. Both providers directly attributed respondent's tendency to anger quickly and lash out—sometimes violently—to her mood disorder. They both recommended that respondent find medication and engage in therapy to assist her in overcoming her mood disorder.

¶ 15 The State also submitted one of respondent's mental health assessments dated within the relevant timeframe. Again, a mental health professional diagnosed respondent with a mood disorder. Respondent was still not consistently attending her counseling sessions. This assessment established that during the relevant timeframe, multiple therapy providers terminated respondent from treatment due to poor attendance. The counselors further indicated that when she did attend, respondent did not believe she had any psychological issues that needed to be addressed.

¶ 16 The family's DCFS caseworker, Brenda Lee, testified for the State. She was the family's caseworker since October 2011 and during the relevant timeframe (December 8, 2013, to September 8, 2014). Lee testified that respondent moved frequently during this time period. From January 2014 to June 2014, for example, respondent moved six times. Two of those moves were the direct result of altercations respondent had with other residents in her home. Respondent completed substance abuse treatment prior to the relevant time period. Respondent missed a total of four drug tests, the first two months of testing, during the relevant time period. After May 2014, however, respondent completed all drug testing as required and the results were all negative.

¶ 17 A Bridgeway Rehabilitations employee, Dora Berger, also testified at the hearing. Berger stated she supervised some of respondent's visits with the minors. She observed a visit with all five minors in May 2014. At the visit, respondent had trouble supervising the minors. More importantly, she used a plastic bag as a swing for the youngest child, an 18-month old.

¶ 18 Respondent argued the State did not prove her failure to make reasonable progress because the neglect petition was primarily based on respondent's domestic violence and substance abuse issues. Respondent claimed these issues did not repeat themselves during the

relevant timeframe. The trial court expressed concern over the findings from respondent's more recent mental health assessment and her failure to appear at counseling sessions consistently. Ultimately, the trial court found that respondent made "minimal progress toward the goals and objectives" and that the State had proved respondent's failure to make reasonable progress by clear and convincing evidence. The trial court deemed respondent unfit. In August 2015, the court conducted a best interest hearing and, thereafter, terminated respondent's parental rights.

¶ 19 Respondent appeals, arguing that the trial court's finding that she failed to make reasonable progress was against the manifest weight of the evidence. We affirm the trial court's ruling.

¶ 20 ANALYSIS

¶ 21 I. Standard of Review

¶ 22 At a fitness hearing, the State has the burden of proving parental unfitness by clear and convincing evidence. 705 ILCS 405/2-29 (West 2014); *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). When the State seeks to terminate someone's parental rights, each case is "*sui generis* and must be decided based on the particular facts and circumstances presented." *In re D.D.*, 196 Ill. 2d 405, 422 (2001) (citing *In re Adoption of Syck*, 138 Ill. 2d 255, 279 (1990)).

¶ 23 Reviewing courts will not overturn a trial court's finding of unfitness in a termination of parental rights proceeding unless it is against the manifest weight of the evidence. *In re S.H.*, 2014 IL App (3d) 140500, ¶ 28. A trial court's finding of unfitness is given great deference due to its superior opportunity to evaluate the credibility of witnesses. *In re Jordan V.*, 347 Ill. App. 3d at 1067. "A determination will be found to be against the manifest weight of the evidence only if the opposite conclusion is clearly evident [citation] or the determination is unreasonable,

arbitrary, or not based on the evidence presented [citation]." *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 24 On appeal, respondent argues the trial court's ruling was against the manifest weight of the evidence. Respondent asserts that she made improvements in the areas of domestic violence and substance abuse, the grounds for the neglect petitions. Thus, respondent argues she made reasonable progress. Respondent finds *In re Gwynne P.*, 346 Ill. App. 3d 584 (2004), persuasive, asserting its finding on reasonable progress is directly analogous to her case.

¶ 25 The evidence presented at respondent's fitness hearings confirm her failure to make reasonable progress toward the return of D.R., A.R., E.R., M.R., and Sy.D. from December 8, 2013, to September 8, 2014. Even assuming respondent had been in zero domestic disputes and abstained from abusing substances during the relevant nine-month period, completing some of the tasks ordered by the court does not automatically equate with reasonable progress. See, *e.g.*, *In re J.H.*, 2014 IL App (3d) 140185, ¶ 23. The trial court ordered respondent to do several things by the trial court in order to demonstrate reasonable progress. Refraining from acts of domestic violence and the abuse of substances is not, *per se*, reasonable progress. In fact, these elements, while the genesis of the neglect petition, are a small fraction of the whole. Looking at the totality of the circumstances, we find the trial court's finding was not against the manifest weight of the evidence.

¶ 26 II. Failure to Make Reasonable Progress

¶ 27 The trial court may only consider evidence occurring during the relevant nine-month period mandated in section 1(D)(m) in determining whether a parent has made reasonable progress toward return of the minors. *In re J.L.*, 236 Ill. 2d 329, 341 (2010). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to

parental custody *in the near future*." (Emphasis added.) *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (2006) (citing *In re L.L.S.*, 218 Ill. App. 3d 444, 461 (1991)). "Under an objective standard, 'reasonable progress' requires, at a minimum, the parent make measurable steps toward the goal of reunification through compliance with court directives, service plans or both." *In re Gwynne P.*, 346 Ill. App. 3d 584, 594 (2004) (citing *In re J.A.*, 316 Ill. App. 3d 553, 564-65 (2000).

¶ 28 Here, there is evidence that respondent made "minimal" progress toward obtaining custody of the children during the relevant nine-month period. Minimal progress is not automatically considered reasonable progress. The First District did not define "minimum measurable or demonstrable movement toward reunification" before finding the parent in that case made reasonable progress. *In re Gwynne P.*, 346 Ill. App. 3d at 595-96. The *In re Gwynne P.* respondent, however, did everything possible under the circumstances to make reasonable progress. The trial court sentenced respondent to a period of incarceration during the relevant timeframe, which included spending time in segregation. *Id.* Nonetheless, respondent completed all tasks allowed under the circumstances as soon as logistically possible. *Id.* The respondent in this case has done nothing analogous.

¶ 29 Respondent acknowledges she did not do all that was required of her. The sole basis of her argument on appeal is that she passed all of her drug tests and was not involved in domestic violence incidents during the relevant timeframe. She asks this court to look at the totality of the progress made without providing an explanation as to why her progress is confined to these areas. Again, not failing drug tests and getting into two domestic disputes—each of which led to respondent changing her permanent residence—is not, *per se*, reasonable progress.

¶ 30 Refraining from the use of illegal narcotics and acts of domestic violence certainly will have a positive impact on any court's assessment of a respondent's progress at a fitness hearing. In this case, these factors illustrate respondent's relative progress on two fronts, domestic violence and substance abuse. By way of court orders, however, the trial court gave respondent many other means to demonstrate her fitness as a parent after DCFS took the minors into protective custody. Respondent's emphasis on her reasonable progress in two of those areas—while both are significant areas accorded substantial weight—is not enough for this court to find that the trial court reached a result that is clearly not evident from the record or unreasonable. *In re D.F.*, 201 Ill. 2d 476, 498 (2002).

¶ 31 For starters, respondent's reliance on her 100% drug test pass rate is slightly misleading. We cannot ignore the fact that without explanation, respondent failed to submit drug tests for the first two months during the relevant timeframe. Additionally, as respondent acknowledges in her brief, the State's basis for neglect was based on "substance abuse" with the primary substance abused being alcohol.

¶ 32 Nonetheless, during the relevant timeframe respondent demonstrated she made no progress toward the return of the minors. Respondent did not complete any of the prescribed counseling blocks beyond attending some individual sessions. The therapy providers indicate that when respondent did attend sessions, she participated minimally and did not think she was in need of counseling. Respondent continued to get into significant arguments with people in her home, which led to, at least, two address changes. Moreover, respondent consistently failed to maintain a stable home environment or employment throughout the relevant timeframe.

¶ 33 The record before this court establishes that the trial court had ample evidence to conclude that respondent failed to make reasonable progress between December 8, 2013, and

September 8, 2014, toward the return of the minors. Counsel highlights on appeal that respondent did complete *some* counseling during the relevant nine-month period. This does not outweigh the State's proof that respondent failed to make reasonable progress toward the return of the minors. To the contrary, the record establishes that respondent achieved no measure of stability in order to resume caring for the minors. Respondent failed to reasonably comply with court directives in an effort to facilitate the return of her children. Most tellingly, respondent did not meaningfully engage in therapy sessions to address the root of her problems or maintain a stable home environment. The manifest weight of the evidence supports the trial court's determination that respondent failed to make reasonable progress.

¶ 34 CONCLUSION

¶ 35 For the foregoing reasons, we affirm the judgment of the circuit court of Peoria County.

¶ 36 Affirmed.