2016 IL App (3d) 160311-U

Order filed December 20, 2016

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2016

In re ADOPTION OF I.H.,	)	Appeal from the Circuit Court
	)	of the 10th Judicial Circuit,
a Minor	)	Peoria County, Illinois.
	)	
(Trina Downing and David Downing,	)	
	)	
Petitioners-Appellees,	)	Appeal Nos. 3-16-0311 and 3-16-0312
	)	Circuit Nos. 07-JA-305, 10-P-331, and
v.	)	14-AD-33
	)	
Tonya H.,	)	
	)	The Honorable
Respondent-Appellant).	)	Jodi M. Hoos,
	)	Judge, presiding.

JUSTICE McDADE delivered the judgment of the court.
Justices Carter and Holdridge concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court did not err when it found that the respondent-mother was an unfit parent for failing to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare.

¶ 2 The circuit court entered orders finding the respondent-mother to be an unfit parent and terminating her parental rights to the minor, I.H. On appeal, the respondent argues that the

circuit court erred when it found that she failed to maintain a reasonable degree of interest, care, or concern for the minor and failed to make reasonable progress toward the return of the minor to her care. We affirm.

¶ 3 FACTS

¶ 4 This case has a long and complicated procedural history dating back to 2007. The minor was born on August 19, 2007, and the State filed a juvenile petition alleging that the minor's environment was injurious to his welfare. The respondent-mother voluntarily placed the minor with her adoptive sister, Trina Downing.

¶ 5 After a hearing, the circuit court found that the minor was neglected due to an injurious environment. A dispositional hearing was later held, after which the minor was made a ward of the court, the respondent was found to be unfit, and guardianship was granted to the Department of Children and Family Services.[1]

¶ 6 The respondent appealed the circuit court's neglect and dispositional orders. This court reversed the circuit court's neglect adjudication and remanded the case for further proceedings. *In re I.H.*, No. 3-08-0899 (unpublished order under Supreme Court Rule 23). Our supreme court denied the State's petition for leave to appeal on January 12, 2010.

¶ 7 On February 8, 2010, the circuit court entered an order vacating its finding of parental unfitness. The wardship was continued, however, as the respondent signed a form for the appointment of a short-term guardian. Through that form, the respondent assigned temporary guardianship of the minor to the Downings, which was scheduled to expire on August 12, 2010.

¶ 8 On March 9, 2010, the circuit court entered an order terminating the wardship and closing the juvenile case.

[1] The biological father had surrendered his parental rights in 2008.

¶ 9 On August 12, 2010, the day that the temporary guardianship was set to expire, the Downings filed a petition for guardianship in the circuit court. The petition alleged that the respondent: (1) "has failed to establish a safe and stable residence for the minor child"; (2) "has failed to procure employment or a means to support herself and the minor child"; (3) "has failed to follow her psychotropic regiment [*sic*]"; and (4) "has been involved with a paramour that has a significant criminal history and presents a danger to the emotional and physical well being of the minor child." Further, the petition alleged that the minor "has/had special needs relating to his development, including speech therapy that the Petitioners are aware of and have been exclusively assisting him." Additionally, the petition alleged that the Downings had been caring for the minor since he was three months old and that they had been exclusively providing for the minor's financial, educational, and medical needs. The Downings later filed an emergency petition for guardianship on September 7, 2010.

¶ 10 The respondent did not file her *pro se* appearance until February 28, 2011, and she filed a responsive pleading on March 25, 2011. At a hearing on the pending matters, the circuit court appointed a mediator. The mediation took place on May 25, 2011, and the only issue on which the parties agreed was temporary visitation.

¶ 11 On July 20, 2011, the circuit court held a trial on the Downings's petition for guardianship. The court found that the minor was a special needs child who suffered from a number of disabilities and that the respondent lacked stable and safe housing, employment, and knowledge of the minor's medical needs such that the minor could not be returned home to the respondent. The court honored the visitation agreement but granted guardianship to the Downings. The court also ordered the respondent to make progress on the following tasks: (1) stable and safe housing; (2) obtaining financial ability to provide for the minor; (3) attend the

minor's medical appointments and demonstrate an awareness of his conditions and an ability to meet his special needs; (4) engage in community services as suggested by the guardian *ad litem*; and (5) participate in family counseling with the minor to assist in bonding with him and understanding his needs.

¶ 12 Over the next two-plus years, visitation was reviewed numerous times and guardian *ad litem* reports were filed.

¶ 13 On April 10, 2014, the Downings filed a petition to terminate the respondent's parental rights to the minor. The petition alleged that the minor had been in the Downings's care since November 2007; that they were granted guardianship of the minor on July 20, 2011; that the respondent failed to maintain a reasonable degree of interest in the minor; and that the respondent failed to make reasonable progress toward the return of the minor to her care. The Downings also filed a petition for adoption on the same date.

¶ 14 The circuit court held a bench trial on the petition over several dates in 2016. Several witnesses testified, including Trina Downing, who testified, *inter alia*, that the minor was practically a normal child physically, but he had a lot of sensory issues. She stated that the minor tested within the autistic range on four traits, so he had some developmental issues. He had been receiving services through Easter Seals for his issues since he was two years old. Trina testified that the respondent had behavioral issues for years during medical appointments for the minor, including vulgar language, verbal threats toward the Downings, and generally being difficult. Trina stated that at one appointment at Easter Seals, the respondent had to be escorted out of the building by staff and was asked not to come back.

¶ 15 Trina also testified that visitations between the respondent and the minor began as supervised visitations at the Downings's house. However, due to the respondent's anger issues,

visits were moved to an agency and were supervised by a third party. When the visits were being held at the Downings's house, they were providing the respondent with transportation to and from the visits. The respondent's behavior issues were with the Downings, not the minor, but did occur in front of the minor, including foul language. After the visits had been moved to the agency, the minor began experiencing anxiety before the visits and had behavioral problems at school on visitation days. During one visit in 2012 or 2013, the visit was canceled because the respondent showed up with her boyfriend and a dog.

¶ 16 Trina testified that the minor had been diagnosed with attention-deficit hyperactivity disorder and was taking medication for that condition. Trina also stated that there were costs associated with the minor's medical care that were not covered by insurance; the Downings paid those costs out-of-pocket without any financial contribution from the respondent, despite the fact that the respondent was court-ordered to pay half of those expenses as of September 2013. Trina further testified that the respondent had been ordered to pay child support, but those payments became sporadic in 2015 and had completely stopped as of November 25, 2015.

¶ 17 Trina testified that the respondent had not seen the minor since October 2014. Visitation had been suspended at that time in the minor's best interest due to the behavioral issues he was having surrounding the visits. Since that time, the respondent had not attempted to contact the minor via phone calls or any other correspondence. In addition, Trina stated that she had not had any contact with the respondent since October 2014.

¶ 18 On cross-examination, Trina stated that she and her husband did not teach the minor to call the respondent by her first name; the minor made that decision on his own just like he made the decision to call the Downings "mother" and "father." She did nothing to alter this pattern. Trina also stated that while she and the respondent were biological sisters, they grew up

separately and did not have a developed relationship. Their tenuous relationship had deteriorated several years earlier when the respondent walked out of a visit at the Downings's house.

¶ 19 Trina also mentioned during cross-examination that the respondent granted temporary guardianship to the Downings because at the time that the juvenile case was dismissed, the respondent was living in an apartment complex that did not allow children. Further, Trina stated that during the medical appointments that the respondent had been court-ordered to attend, the respondent's behavioral issues consisted of "using vulgar language, verbal threats toward us, being there because she was cornered and had to be, not because she wanted to be, [and] displaying behavior toward the doctors."

¶ 20 David Downing's testimony largely corroborated Trina's testimony. David added that the respondent's address changed three times. There also were times that the respondent did not inform the Downings about her living situation. He also stated that it had been years since the respondent had attended one of the minor's medical appointments.

¶ 21 The respondent testified that she had been renting a two-bedroom house in Peoria by herself since around the beginning of January. She had been ordered to participate in counseling with the minor; she had two sessions with one counselor before "he got pulled by Dave and Trina" and two sessions with another counselor before the minor "got pulled" again. She had a job for over two years at Kroger, but she quit in November 2015 because her parents had died and she had expected to move in with the rest of her family[2]. She had been looking for employment since that time.

[2] Upon questioning by the court, the respondent stated that her "housing didn't come through" so she never actually moved.

¶ 22 The respondent stated that her relationship with Trina deteriorated after the minor was born and placed with the Downings because Trina began telling the respondent how the minor would be raised. She said she signed the initial temporary guardianship form because her attorney at the time told her to do so, although on cross-examination, she admitted that she was living in a shelter at the time the minor was born. She initially stated that she did not ask the Downings to take guardianship of the minor, but then she stated that she did in fact ask them to take the minor to keep him from being placed with strangers. The respondent also testified that she attended a majority of the visitations with the minor over the years.

¶ 23 On cross-examination, the respondent stated that she had not been in a relationship since 2012 or 2013. She also admitted that while she was employed at Harbor Freight, she was able to get them to stop deducting child support from her paychecks. She claimed that there was no court order for child support at that time, but conceded that she had attended a contempt hearing held because there was, in fact, a court order for child support that she was violating. She also admitted that she felt she did not need to contribute financially to the minor: "I don't feel obligated to pay child support for my son, I felt obligated not to pay when somebody else is raising my son where my son should be able to and entitled to come home."

¶ 24 The respondent also admitted to having been in some domestically violent relationships during the guardianship period. One was with Patrick Patterson, against whom she had obtained three orders of protection in the past. She later stated her involvement with Patterson was a "fling," not a relationship, but she also admitted that she had been living with Patterson in 2014. Additionally, while Trina had testified that she had recently seen the respondent with Patterson at a laundromat, the respondent denied that allegation. She stated that on the day Trina allegedly

saw her, she had been in a car accident on the way to the laundromat and never actually made it there.

¶ 25 Further, regarding the minor's medical circumstances, the respondent denied she was ever escorted out of Easter Seals by their staff. She also stated that she did not know what the minor's diagnoses were, as no one had ever informed her of them. She said that she knew the minor had shown symptoms of hyperactivity from birth and that he had been classified as autistic, but she disagreed with the autism diagnosis.

¶ 26 The court asked the respondent numerous questions after the attorneys were finished. The respondent gave vague responses to many questions, including ones aimed at discerning how many places she had lived prior to 2015. The respondent seemed to indicate that she had stayed in multiple places, but eventually said that it had been just one. Also, the court inquired as to why the respondent's one-year-old child was not residing with her; the respondent said that she had planned to move to Bureau County and that she moved her child there (to her sister's residence), but that she never moved there. She said that she simply had not moved her child back to Peoria yet. The respondent also testified that she had not attempted to contact the minor since visitation was suspended because she thought she was prohibited from doing so by court order. However, the court pointed out to her that no such prohibition existed. The court also pointed out that the order specifically stated that the respondent could seek a resumption of visits in the future and that she should engage in individual counseling and domestic violence counseling. The respondent said that she was not aware of the statement in the order that she could seek a resumption of visits.

¶ 27 Sandra Long testified that she was a counselor and had seen the respondent between March and April 2015. She offered anger management counseling to the respondent based on a

self-report. She stated that the respondent completed that counseling and she "didn't think [the respondent] needed anything other than the sessions we provided."

¶ 28 On May 4, 2016, the circuit court issued its decision. First, the court found that the Downings had met their burden of proving that the respondent failed to maintain a reasonable degree of interest, care, or responsibility toward the minor. The court stated that after visitation had been suspended, the respondent made no attempt to resume contact with the minor—a period of 18 months and counting. The court also found it significant that the respondent denied that the minor had medical issues and that she was disruptive at visits such that visitation had to be supervised by a third party and later suspended.

¶ 29 Second, the court found that the Downings had met their burden of proving that the respondent failed to make reasonable progress toward the return of the minor to her care. The court found that the respondent had not obtained stable housing; had obtained employment at some points but had been unemployed for a significant amount of time leading up to the trial; had only attended a couple of counseling sessions; did not take advantage of counseling services provided to her through the guardian *ad litem*; and caused medical appointments to be terminated due to her disruptive behavior, including her denial that the minor had medical issues.

¶ 30 Third, the court found that the respondent's testimony was not credible due to her contradictions and poor in-court demeanor.[3]

¶ 31 Fourth, the court found that it was in the minor's best interest to terminate the respondent's parental rights.[4]

[3] Notably, during the cross-examination of Trina, the respondent made a comment and the circuit court admonished her to refrain from making any comments or body gestures while other people were testifying, the latter of which the court noted the respondent had been doing during the hearing.

¶ 32 The respondent appealed.

¶ 33 ANALYSIS

¶ 34 On appeal, the respondent essentially[5] argues that the circuit court erred when it found that she failed to maintain a reasonable degree of interest, care, or concern for the minor and failed to make reasonable progress toward the return of the minor to her care.

¶ 35 In an adoption case, the process of terminating a nonconsenting parent's parental rights involves two steps: (1) a determination of whether the parent is unfit; and (2) whether the termination of parental rights is in the best interest of the minor. *In re Adoption of Syck*, 138 Ill. 2d 255, 276-77 (1990). Regarding the first step, the petitioning party must prove by clear and convincing evidence that the parent is unfit. *In re M.J.*, 314 Ill. App. 3d 649, 655 (2000). A circuit court is in the best position to determine parental unfitness due to the factual findings and witness credibility assessments that it must make. *Id.* We defer to those findings and will disturb them only if they are against the manifest weight of the evidence. *Id.* "A factual finding is against the manifest weight of the evidence only if the opposite conclusion is clearly evident or the determination is unreasonable, arbitrary, and not based on the evidence presented." *Id.*

¶ 36 Section 1(D) of the Adoption Act defines an unfit parent as including one who fails "to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare." 750

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[4] We have not included the court's oral findings regarding the best interest decision because the respondent has not challenged that portion of the court's decision on appeal.

[5] The respondent's brief incorrectly describes the decision appealed as a grant of summary judgment in favor of the Downings. While she has phrased her argument in terms of the existence of triable facts in regard to the termination of her parental rights, because she has specifically argued against the circuit court's two findings of parental unfitness, we construe her argument as an allegation of error regarding the unfitness portion of the termination process.

ILCS 50/1(D)(b) (West 2014). Our supreme court has stated the following regarding a determination made under this provision:

> "in determining whether a parent showed reasonable concern, interest or responsibility as to a child's welfare, we have to examine the parent's conduct concerning the child in the context of the circumstances in which that conduct occurred. Circumstances that warrant consideration when deciding whether a parent's failure to personally visit his or her child establishes a lack of reasonable interest, concern or responsibility as to the child's welfare include the parent's difficulty in obtaining transportation to the child's residence [citations], the parent's poverty [citation], the actions and statements of others that hinder or discourage visitation [citation], and whether the parent's failure to visit the child was motivated by a need to cope with other aspects of his or her life or by true indifference to, and lack of concern for, the child [citation]. If personal visits with the child are somehow impractical, letters, telephone calls, and gifts to the child or those caring for the child may demonstrate a reasonable degree of concern, interest and responsibility, depending upon the content, tone, and frequency of those contacts under the circumstances. [Citation.] Also, mindful of the circumstances in each case, a court is to examine the parent's efforts to communicate with and show interest in the child, not the success of those efforts. [Citation.]" *Syck*, 138 Ill. 2d at 278-79.

There is no temporal limitation when considering parental unfitness under this provision. *M.J.*, 314 Ill. App. 3d at 656.

¶ 37 In this case, the evidence presented supports the circuit court's findings that the respondent failed to maintain a reasonable degree of interest, concern, *and* responsibility as to the minor's welfare. Of paramount significance is the fact that the respondent had zero contact with the minor during the 18 months between the suspension of visitation and the termination hearing. While she claimed that she thought she could not have any contact with him pursuant to court order, not only was she found to be not credible as a witness, but she also evinced a lack of understanding of the specifics of the court's order that suspended visitation. She claimed to be unaware of the language in the order that specifically stated she could seek a resumption of visits. The fact that the respondent did not even know what the order contained is strong evidence that she failed to maintain a reasonable degree of interest, concern, and responsibility as to the minor's welfare. See, *e.g.*, *In re Jason U.*, 214 Ill. App. 3d 545, 552-53 (1991) (holding that, absent a reasonable explanation, a parent's failure to make any attempt to contact the minors over a 30-month period constituted proof that the parent failed to maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minors).

¶ 38 Furthermore, even before the 18-month period without any attempts to contact the minor, the respondent struggled with behavioral issues at both visits and medical appointments. Those issues resulted in the visitation site changing from the Downings's residence to an agency with third party supervision, and ultimately all visitation being suspended. During one medical appointment, her behavior was so disruptive that she had to be escorted out of the facility.

¶ 39 In addition, the respondent seemed largely unaware of the minor's medical conditions. She outright denied that he had any issues with autism, even though he had scored within the

autistic range in four testing categories. The respondent also had not been paying child support or contributing to the minor's medical expenses, despite being ordered by the court to do so. She simply stated she felt that she did not have to make those payments because someone else was raising the minor and she was able to raise him herself.

¶ 40 Moreover, the respondent made no attempt to address issues of domestic violence in her relationships. In fact, she was evasive when asked about her relationship history, including her contradictory statements that she had not been in a relationship since 2012 or 2013 but that she had lived with Patterson in 2014 and had obtained orders of protection against him on three separate occasions.

¶ 41 Under the circumstances presented by this case, our review of the record reveals the circuit court's unfitness finding was not against the manifest weight of the evidence. There is nothing in the record to indicate that the court's findings were clearly erroneous or that the decision was unreasonable, arbitrary, or not based on the evidence presented. See *M.J.*, 314 Ill. App. 3d at 655. Accordingly, we hold that the circuit court did not err when it found the respondent to be an unfit parent for failing to maintain a reasonable degree of interest, concern, *and* responsibility as to the minor's welfare.

¶ 42 Only one statutory ground is necessary to prove that a parent is unfit. *M.J.*, 314 Ill. App. 3d at 655. Our ruling on the first issue obviates the need to address the respondent's second argument that the court erred when it found that she was unfit for failing to make reasonable progress toward the return of the minor to her care. *See id.*

¶ 43 Because the respondent has not challenged the circuit court's best interest determination, we need not review that portion of the court's judgment.

¶ 44 CONCLUSION

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

¶ 46 Affirmed.