2016 IL App (4th) 150705-U

NO. 4-15-0705

FILED
January 19, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: D.C., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Edgar County
v.	)	No. 10JA5
CAROL COLLIER,	)	
Respondent-Appellant.	)	Honorable
	)	Matthew L. Sullivan,
	)	Judge Presiding.

JUSTICE POPE delivered the judgment of the court.
Justices Turner and Appleton concurred in the judgment.

ORDER

¶ 1 *Held*: The judgment of the trial court terminating respondent's parental rights is affirmed.

¶ 2 In December 2010, the State filed an abuse petition as to D.C., a male minor born February 10, 2006. Respondent, Carol Collier, is the mother of the minor. In April 2011, respondent admitted the allegations of the petition and D.C. was adjudicated abused and made a ward of the court. Guardianship of the minor was placed with the Department of Children and Family Services (DCFS), but custody remained with respondent and D.C.'s father, who is not a party to this appeal. In April 2014, the State filed a motion to terminate respondent's parental rights. In September 2015, the trial court terminated respondent's parental rights. Respondent appeals, contending the court's finding she was unfit was against the manifest weight of the evidence, as was the finding it was in the minor's best interest to terminate her parental rights.

¶ 3 We affirm.

¶ 4 I. BACKGROUND

¶ 5 On April 26, 2011, respondent admitted D.C. was abused because she allowed him to have contact with a known sex offender, Chris Kennedy. D.C.'s older brother, J.C., had reported Kennedy touched him on his crotch and showed him pornographic pictures. (This appeal only relates to D.C. The record reflects J.C.'s date of birth is November 8, 2000.) By agreement, guardianship of D.C. was placed with DCFS and custody remained with respondent and her husband, David Collier. As part of the dispositional order, an order of protection was entered, prohibiting contact between D.C. and Kennedy.

¶ 6 According to the permanency-review report filed October 25, 2011, respondent was only having supervised visits with her children because she continued to allow them to have contact with her paramour, Kennedy. The minor was living with his father, who was separated from respondent. At the permanency-review hearing on October 25, 2011, the trial court found respondent had not made reasonable and substantial progress, nor did she make reasonable efforts toward returning the minor home.

¶ 7 A permanency-review report filed April 20, 2012, indicated, throughout the life of this case and in previous investigations, respondent was told multiple times Kennedy was to have no contact with her sons. At the time of this report, respondent was living with Kennedy and having only supervised visitation with D.C. On April 24, 2012, the trial court found respondent had not made reasonable efforts toward returning the minor home.

¶ 8 The permanency-review report filed October 18, 2012, reflected respondent was still living with Kennedy. The permanency order filed October 23, 2012, found respondent had not made reasonable progress or reasonable efforts toward the return home of the minor.

¶ 9 On November 30, 2012, D.C. was placed in a foster home as a result of being placed in contact with a sex offender, *i.e.*, Kennedy. The August 6, 2013, permanency order found, once again, respondent was not making reasonable progress or efforts toward returning the minor home, as did the December 16, 2013, permanency order.

¶ 10 On April 10, 2014, the State filed a motion to terminate parental rights. The motion alleged respondent was unfit pursuant to 750 ILCS 50/1(D)(b), (g), (m)(i), (m)(ii), and (m)(iii) [*sic*] (West 2014), in that she failed to:

> "(A) maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare; and/or
>
> (B) protect the minor from conditions within his environment injurious to the minor's welfare; and/or
>
> (C) make reasonable efforts to correct the conditions that were the basis for the removal of the child from her within nine months after adjudication of neglected minor under section 2-3 of the Juvenile Court Act; and/or
>
> (D) make reasonable progress toward return of the child to her within nine months after an adjudication of neglected minor under section 2-3 of the Juvenile Court Act; and/or
>
> (E) make reasonable progress toward the return of the child to her during any nine-month period after the end of the initial nine-month period following the adjudication of neglected minor under section 2-3 of the Juvenile Court Act."

(We note the statute was amended effective January 1, 2014, allowing the trial court to look at

any nine-month period after adjudication rather than separating out the first nine-month period from any other nine-month period.)

¶ 11 The fitness hearing took place on July 7, 2015. Respondent was called as an adverse witness by the State. Respondent testified she pleaded guilty to felony obstruction of justice for an incident that occurred on October 26, 2011. According to respondent, on that date, the police came looking for Chris Kennedy for a parole/probation check. Respondent lied about whether Kennedy was there. At that time, she was living with Kennedy. Respondent also admitted she had been told by DCFS not to be around Kennedy. However, respondent testified she did not think Kennedy posed a risk to her children.

¶ 12 Stacey East, an investigator with DCFS, testified there had been eight indicated reports of D.C. being at risk of sexual harm because Kennedy, a child sex offender, had access to him. Kennedy had been convicted in 1996 of aggravated criminal sexual abuse and was convicted of aggravated criminal sexual abuse of a minor under the age of 13 in 2000. In 2007 and 2010, Kennedy received convictions for failure to register as a sex offender. East testified an order of protection was entered on April 26, 2011, prohibiting contact between Kennedy and D.C. On October 5, 2011, East saw Kennedy with respondent at respondent's daughter's residence. Elizabeth Albers, respondent's daughter, is the biological mother of D.C. (Respondent and David adopted D.C.) East saw Kennedy go out the back door of the residence and down the alley after she arrived. D.C. and his brother, J.C., who had reported being sexually abused by Kennedy, were both present. Three weeks later, on October 26, 2011, East went to Albers' residence again, accompanied by Paris police investigator Terry Rogers, for an unannounced visit. Respondent answered the door and denied Kennedy was in the house. However, the police at the back of the house saw Kennedy trying to leave the residence. On this

occasion, D.C. was not present.

¶ 13 On January 30, 2015, East went to Albers' residence. Respondent was present. Kennedy was living next door to Albers. While East was present, Kennedy walked in unannounced, without knocking. As East put it, Kennedy "just opened the door and came in."

¶ 14 Terry Rogers, the Paris police investigator, testified on December 8, 2010, he went to respondent's trailer to assist with a parole/probation check on Kennedy, who was respondent's paramour. (Respondent was still married to David then, and in fact remained married to David throughout the case.) Respondent told Rogers there had been about 2,000 pornographic pictures on one of the computers in the trailer and she had deleted them. Respondent told Rogers Kennedy used the computer and she had created a Facebook account for Kennedy. Rogers testified this was a violation of the terms of sex-offender registration.

¶ 15 On October 26, 2011, Rogers went with Stacey East to the residence of Elizabeth Albers to see if Kennedy was there. That residence was 394 feet from a park with a playground. Kennedy would be in violation of registered-sex-offender restrictions if he was there. Respondent was living with Albers at this time. Respondent denied Kennedy was there "over and over again." Kennedy finally came out on his own. Rogers had seen Kennedy with respondent on various occasions, including sometime between April and May 2015.

¶ 16 Susan Williamson, respondent's probation officer, testified respondent told her she had an on-and-off relationship with Kennedy and they resided together at times. On October 25, 2013, Williamson was at Walmart in Paris. She saw Kennedy checking out and getting ready to leave the store. He had his arms wrapped around respondent. Kennedy and respondent were hugging each other. Williamson also testified respondent told her Kennedy had come over to her residence in December 2012 to cut tree limbs down and D.C. was home at the time.

¶ 17 Debbie Smith, a foster-placement caseworker with DCFS, testified D.C. was removed from respondent's home in November 2012. She testified the abuse petition was filed in December 2010 based on Kennedy's (a known sex offender) continued access to D.C. and his brother. Smith testified Kennedy was respondent's boyfriend and respondent continued to have contact with Kennedy during the first nine months following the adjudication of abuse on April 26, 2011. In July 2011, there was a report of Kennedy being with the boys. In October 2011, Smith gave respondent an ultimatum—either she needed to move out of the residence or the children would be removed from both parents. Respondent moved out. David stayed with D.C. Respondent was rated unsatisfactory with respect to supervision of the boys during the initial nine-month period and she was rated unsatisfactory with regard to preventing access to the children by Kennedy. Respondent did not complete parenting classes during the first nine months, nor was she cooperative with services. D.C. was placed in foster care in November 2012. Prior to that, D.C. had been living with his father. Smith had to keep reminding D.C.'s father D.C. was to have no contact with Kennedy and no unsupervised visits with respondent.

¶ 18 Smith became aware respondent, Albers, and even Kennedy had been providing transportation to school for D.C. D.C. was not to be with Kennedy, nor with Albers or respondent unsupervised. This resulted in D.C.'s removal to foster care. Between April 26, 2011, and January 26, 2012 (the initial nine months following adjudication), Smith talked to respondent about her relationship with Kennedy. Respondent always denied contact or a relationship with Kennedy.

¶ 19 In February 2013, Smith and her supervisor, Susan Taylor, talked with respondent in her home. They addressed respondent's continuing contact with Kennedy. Respondent continued to deny Kennedy posed any risk to D.C. Smith noted D.C. had lived with his father

from the time of respondent's arrest in October 2011 until he was placed in foster care in November 2012. His brother, J.C., was living in a residential facility in Des Plaines. Respondent did not go to a required evaluation for over two years, finally obtaining the evaluation in the spring of 2013.

¶ 20 Following the evidence, the trial court found the State proved unfitness as alleged in paragraphs (A) through (D) by clear and convincing evidence. The State withdrew its allegations in paragraph (E) (failure to make progress in a nine-month period following the initial nine months after adjudication).

¶ 21 On August 25, 2015, the trial court held the best-interest hearing. Smith testified D.C. was now nine years old. The case had originated in 2010. In her opinion, respondent was not in a position to have D.C. in her care for the foreseeable future. Respondent failed to take any responsibility for allowing contact with Kennedy. D.C. had been in foster care for nearly three years.

¶ 22 D.C. had been with his current foster family since October 2014 and was greatly improved since coming to live with them. D.C. was in a safe, stable, and loving environment. He was bonded with his foster parents. Smith testified D.C. deserved a permanent home, as it had been almost five years since the case was filed. Smith believed D.C.'s parents had not done anything to change the conditions that brought D.C. into care. If D.C. was returned to his parents, Smith believed Kennedy would be part of his life.

¶ 23 Kayla Bower, D.C.'s foster mother, testified she is a special-education teacher. Since D.C. came to live with her and her husband, he had moved from special education to regular school classes. She and her husband intended to adopt D.C. if parental rights were terminated.

¶ 24 The trial court went through the best-interest factors in 705 ILCS 405/1-3(4.05) (West 2014) and concluded the State had proved by a preponderance of the evidence it was in D.C.'s best interest to terminate respondent's parental rights. This appeal followed.

¶ 25 II. ANALYSIS

¶ 26 On appeal, respondent argues the State failed to prove her unfit by clear and convincing evidence and the trial court's order terminating her parental rights was not in the best interest of the minor.

¶ 27 A. Fitness Determination

¶ 28 A parent will be deemed unfit if the State proves, by clear and convincing evidence, one or more of the grounds of unfitness enumerated in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). See *In re A.L.*, 409 Ill. App. 3d 492, 499, 949 N.E.2d 1123, 1128 (2011). This court will not overturn a finding of parental unfitness unless the finding is against the manifest weight of the evidence, meaning "the correctness of the opposite conclusion is clearly evident from a review of the evidence." *In re T.A.*, 359 Ill. App. 3d 953, 960, 835 N.E.2d 908, 913 (2005).

¶ 29 We note the State need only prove one statutory ground to establish parental unfitness. *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). Accordingly, we begin our analysis with respondent's argument the trial court erred in finding she failed to make reasonable progress toward the return of the minor within nine months following adjudication.

¶ 30 This court judges reasonable progress according to an objective standard. See *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 605 (2004). For a court to find progress was reasonable, the record must show, at a minimum, measurable or demonstrable

movement toward the goal of returning the child to the parent. See *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). A court will find progress to be reasonable when it can conclude it will be able to return the child to parental custody in the near future. *A.L.*, 409 Ill. App. 3d at 500, 949 N.E.2d at 1129 (quoting *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991)).

¶ 31 The evidence at the fitness hearing showed respondent continued to maintain a relationship with Kennedy. Even more concerning was her willingness to lie about her continued contact with Kennedy. Under these circumstances, any court would be leery about allowing the minor to live with respondent.

¶ 32 In addition to continuing her relationship with Kennedy and lying about it, respondent also allowed Kennedy to be around D.C. after the case was filed and an order of protection preventing contact between Kennedy and D.C. was in place. Moreover, respondent failed to complete her parenting classes and her evaluation within the first nine months following adjudication. She was no closer in 2015 to having D.C. returned to her care than she was in October 2011, when she was allowed only supervised visits with D.C.

¶ 33 In *L.L.S.*, 218 Ill. App. 3d at 461, 577 N.E.2d at 1387, this court discussed reasonable progress under section 1(D)(m) of the Adoption Act and held as follows:

> " 'Reasonable progress' *** exists when the [trial] 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 ***." (Emphases in

original.)

¶ 34 Clearly, D.C. was in no position to be returned to respondent's care in the near future. As such, the trial court's finding of unfitness was not against the manifest weight of the evidence.

¶ 35 B. Best-Interest Determination

¶ 36 After a parent is found unfit, the trial court shifts its focus in termination proceedings to the child's interest. *In re D.T.*, 212 Ill. 2d 347, 364, 818 N.E.2d 1214, 1227 (2004). At the best-interest stage, a "parent's interest in maintaining the parent-child relationship must yield to the child's interest in a stable, loving home life." *Id.* Before a parent's rights may be terminated, a court must find the State proved, by a preponderance of the evidence, it is in the child's best interest those rights be terminated. *Id.* at 366, 818 N.E.2d at 1228.

¶ 37 When considering whether termination of parental rights is in a child's best interest, the trial court must consider a number of factors within "the context of the child's age and developmental needs." 705 ILCS 405/1-3(4.05) (West 2014). These include the following:

> "(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;
>
> (b) the development of the child's identity;
>
> (c) the child's background and ties, including familial, cultural, and religious;
>
> (d) the child's sense of attachments, including:
>
> (i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a

sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05)(a) to (j) (West 2014).

¶ 38 The trial court's finding termination of parental rights is in a child's best interest will not be reversed on appeal unless it is against the manifest weight of the evidence. *In re Anaya J.G.*, 403 Ill. App. 3d 875, 883, 932 N.E.2d 1192, 1199 (2010). A decision will be found to be against the manifest weight of the evidence "if the facts clearly demonstrate that the court should have reached the opposite conclusion." *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 39 Here, D.C. was living in a stable, loving environment. He had progressed from special education to regular classes. He was attached to the Bowers and they were attached to him. D.C.'s needs were being met. With the Bowers' stated intent to adopt D.C., he has a chance at a permanent place in a loving home. It was clearly in D.C.'s best interest for respondent's parental rights to be terminated.

¶ 40 III. CONCLUSION

¶ 41 For the reasons stated, we affirm the trial court's judgment.

¶ 42 Affirmed.