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2016 IL App (4th) 150718-U

NO. 4-15-0718

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
March 16, 2016
Carla Bender
4th District Appellate
Court, IL

In re: G.D., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 07JA169
STEPHANIE DIPASQUALE and BRANDON DIPASQUALE,	)	Honorable
Respondents-Appellants.	)	Esteban F. Sanchez,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Presiding Justice Knecht and Justice Pope concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court's findings that (1) respondents are "unfit persons" and (2) it would be in the best interest of the minor to terminate their parental rights are not against the manifest weight of the evidence.

¶ 2 Respondents, Stephanie DiPasquale and Brandon DiPasquale, appeal from an order in which the trial court terminated their parental rights to their daughter, G.D., born on May 27, 2006. Specifically, they challenge the court's findings that they are "unfit persons" and that it would be in G.D.'s best interest to terminate their parental rights. Because we are unconvinced that either of those findings is against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 A. The Petition To Terminate Parental Rights (November 2014)

¶ 5 In its petition to terminate parental rights, the State alleged that respondents were "unfit persons" in two ways. First, they allegedly had failed to make reasonable efforts to correct the conditions that had been the basis for removing G.D. from them. See 750 ILCS 50/1(D)(m)(i) (West 2014). Second, during various nine-month periods after the adjudication of neglect—specifically, March 12 to December 12, 2009; May 16, 2013, to February 16, 2014; and February 16 to November 16, 2014—they allegedly failed to make reasonable progress toward the return of G.D. See 750 ILCS 50/1(D)(m)(ii) (West 2014). (The petition also alleged a failure to maintain a reasonable degree of interest, concern, or responsibility (750 ILCS 50/1(D)(b) (West 2014)), but the State abandoned that allegation.)

¶ 6 B. The Unfit-Person Hearing
(May 2015)

¶ 7 At the beginning of the unfit-person hearing, the assistant State's Attorney requested the trial court to take judicial notice of its adjudicatory order, entered on March 12, 2009. In that order, the court adjudicated G.D. to be a neglected minor because of domestic violence between her parents (see 705 ILCS 405/2-3(1)(b) (West 2008)), and the court placed her in the custody and guardianship of her maternal great-grandmother, Vera Neaville. The court said it would take judicial notice of the adjudicatory order.

¶ 8 The trial court then heard testimony. Among other witnesses, Linda Jones testified. She worked for the Illinois Department of Children and Family Services (DCFS) and had been the assigned caseworker for G.D. since June 2013. There had been three service plans for respondents: the first covering the period of May to November 2013, the second covering the period of November 2013 to May 2014, and the third covering the period of May to November 2014. All three service plans contemplated the same services, including anger-management counseling.

¶ 9 While the second service plan was in effect, respondents attended no counseling sessions.

¶ 10 While the third service plan was in effect, Stephanie DiPasquale attended no counseling sessions, and Brandon DiPasquale attended only two counseling sessions, although his therapist had recommended a session every week.

¶ 11 The trial court found both respondents to be "unfit persons" in that they had failed to make reasonable progress toward the return of G.D. to them.

¶ 12 C. The Best-Interest Hearing
(August 2015)

¶ 13 Among other witnesses, Jones testified in the best-interest hearing. She testified that G.D. was now 9 years old and that ever since she was 14 months old, she had lived with her 70-year-old maternal great-grandmother, Vera Neaville, and Neaville's companion, Terry Peet. G.D. was in fourth grade and was earning "all above-average grades." Neaville kept track of her grades on the school's website and made sure she did her homework. G.D. participated in baseball, basketball, 4-H, and Girl Scouts, and she was "current" with all her medical, hearing, vision, and dental "screens." The house where G.D., Neaville, and Peet lived had three bedrooms, a living room, a dining room, a kitchenette, and a full basement. G.D. had a room of her own, which was "very well furnished" with "age-appropriate furnishings." Neaville had "signed a commitment to adopt if the parental rights [were] terminated."

¶ 14 Because of Neaville's age, there was a "backup plan" approved by DCFS. If something happened to Neaville, G.D. could remain with Peet. Alternatively, G.D. could live with her paternal grandfather, Chris DiPasquale and his wife, Sheri DiPasquale, who had "agreed to be caregivers if something happened" (G.D. knew them).

¶ 15 There was "a very strong bond between [G.D.] and Ms. Neaville, very strong," as Jones had observed from visiting the foster home "at least monthly." The assistant State's Attorney asked Jones:

> "Q. Okay. What things have you observed that give basis to your testimony that there is a very strong bond between [G.D.] and her caregivers in the home?
>
> A. When I visit the home, [G.D.] often, often gives spontaneous hugs to both caretakers. She loves to play a game with Mr. Peet where she stands behind him and he has to guess who it is. She and [G]randma often bake cookies together. She also helps Mr. Peet when he's working about in the yard and things like that. So she's also always showing me cards. If there is an upcoming, special occasion she'll show me, like, 'I made Mr. Peet a Father's Day card,' and of course it's a secret at this point because he hasn't gotten it yet, but [she] does things like that as well.
>
> * * *
>
> Q. In regards to visitation, have you had interaction with [G.D.] in times of stress for her?
>
> A. Yes.
>
> * * *
>
> Q. *** In those times of stress, was [G.D.] able to communicate with you who[m] she wanted to consult with?

A. Yes, any time she was distressed about a visit or what had happened or occurred at a visit, the first person she wants to call is Ms. Neaville, and she's allowed to call her.

Q. When that was communicated to you, was that based on you asking [G.D.,] or was that a spontaneous communication from her?

A. No, she initiated, 'I need to call my mom,' is what she said, actually.

* * *

Q. What does [G.D.] call Ms. Neaville and Mr. Peet?

A. She calls them mom and dad.

* * *

Q. What is the attachment between [G.D.] and Mr. DiPasquale?

A. [G.D.] cares about her father. She cares about her father, but she is very concerned when he yells, screams, and threatens others. She's very concerned about that.

Q. Have you witnessed her reaction to those situations with Mr. DiPasquale?

A. When he's yelling, yes, I have, during the visitation, yeah.

Q. What is the attachment between [G.D.] and her mother, Stephanie DiPasquale?

A. She always cares for her mother. However, she does not like when mom yells and screams[,] and she stresses often she does not like when her mother—which she said her mother told her to write a letter to the judge. She mentioned that on more than one occasion that she did not like that because she knew it was wrong, but she was just doing what her mother asked her to do.

Q. When was the last time [G.D.] has visited with her parents?

A. August of 2014.

Q. Since that last visit, approximately how many times have you met with [G.D.]?

A. About 16 times in person.

Q. During the time from August of 2014 to current, have you noticed any change in [G.D.]?

A. Yes. First of all, [G.D.] is much more calmer, much more calmer. Used to be, when you'd meet with her, even if we were outside or inside the home even downstairs in her playroom, she's looking around, constantly looking around, very nervous, but now she's calmer. She's seems to be much happier to me. She's more willing and encourages we walk around her community. She likes to take walks and she likes to show me what she does in the library and her friends and things like that. So we walk around. She's not hypervigilant.

* * *

Q. Have you discussed, with [G.D.], her future of staying with Ms. Neaville and Mr. Peet?

A. We don't specifically discuss just staying there, but [G.D.] will share with me this is where she's safe, and she will use, 'I'm safe here,' and 'This is where I'm comfortable,' and 'This is where mom and dad is.'

Q. Do you believe that there is any harm to [G.D.] if the parental rights of Brandon DiPasquale and Stephanie DiPasquale are terminated?

A. No.

Q. What do you base that on?

A. I base it on [G.D.'s] need for stability. [G.D.] loves where she's staying. She feels safe where she's staying; that those caregivers have offered her stability. She's comfortable with the community. She loves, basically, doing things with—she calls her 'Mom.' 'We bake cookies. Doing things with dad. We get to work in the yard. We get to go to Menards.' She loves to go to [Menards] and buy things and come back and work with [*sic*]."

¶ 16 After hearing the testimony of the witnesses, the trial court found it would be in G.D.'s best interest to terminate respondents' parental rights, and, accordingly, that is what the court did.

¶ 17 This appeal followed.

¶ 18 II. ANALYSIS

¶ 19 A. The Finding That Respondents Were "Unfit Persons"

¶ 20 To terminate parental rights, the trial court must make two separate and distinct findings: (1) the biological parents of the child have validly executed a voluntary surrender of their parental rights and a consent to adoption, or, alternatively, it has been proven, by clear and convincing evidence, that the parents are "unfit persons" within the meaning of section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)); and (2) it has been proven, by a preponderance of the evidence, that it would be in the best interest of the child to terminate parental rights, appoint a guardian, and authorize that guardian to consent to an adoption of the child. 705 ILCS 405/2-29(2) (West 2014); *In re D.T.*, 212 Ill. 2d 347, 366 (2004); *In re M.M.*, 226 Ill. App. 3d 202, 209 (1992).

¶ 21 In the present case, respondents did not surrender their parental rights to G.D. Therefore, the first prerequisite to the termination of their parental rights was a finding, by clear and convincing evidence, that each of them was an "unfit person" within the meaning of any of the statutory definitions the State invoked in its petition to terminate parental rights. The State invoked two such definitions, one of which said an "unfit person" was a parent who failed to make reasonable efforts toward the return of the child (750 ILCS 50/1(D)(m)(i) (West 2014)) and the other of which said an "unfit person" was a parent who failed to make reasonable progress toward the return of the child (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 22 The trial court was unconvinced that respondents had failed to make reasonable efforts. The court found, however, by clear and convincing evidence, that, during the specified nine-month periods following the adjudication of neglect, respondents failed to make reasonable progress.

¶ 23 In its petition, the State specified three nine-month periods during which respondents allegedly failed to make reasonable progress toward the return of G.D. The first nine-month period, March 12 to December 12, 2009, immediately followed the adjudication of neglect. The second nine-month period was May 16, 2013, to February 16, 2014. The third nine-month period was February 16 to November 16, 2014.

¶ 24 If respondents failed to make reasonable progress during any one of those nine-month periods, they are "unfit persons." See *In re Jacorey S.*, 2012 IL App (1st) 113427, ¶ 27. It is not our place to decide whether they are "unfit persons." Instead, we decide whether the trial court made a finding that was against the manifest weight of the evidence when it found them to be "unfit persons." See *In re C.N.*, 196 Ill. 2d 181, 208 (2001). A finding is against the manifest weight of the evidence only if it is "clearly evident," from the evidence in the record, that respondents' conformance to the statutory definition in question was unproved. *Id*. If reasonable minds could disagree whether a given statutory definition was proven by clear and convincing evidence, we will uphold the trial court's finding. See *Kaloo v. Zoning Board of Appeals*, 274 Ill. App. 3d 927, 934 (1995).

¶ 25 We will choose one of the nine-month periods the State identified in its petition, February 16 to November 16, 2014 (see 750 ILCS 50/1(D)(m)(ii) (West 2014)), and, applying our deferential standard of review (see *In re Diamond M.*, 2011 IL App (1st) 111184, ¶ 31), we will ask whether it is "clearly evident" that the State failed to prove, by clear and convincing evidence, a lack of reasonable progress by both respondents during that period (*C.N.*, 196 Ill. 2d at 208).

¶ 26 "Progress," within the meaning of section 1(D)(m)(ii), is "measurable or demonstrable movement toward the goal of reunification." *In re K.P.*, 305 Ill. App. 3d 175, 180

(1999). Such progress is measured by considering "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." *C.N.*, 196 Ill. 2d at 216-17. Parents have made "reasonable progress" if "the court, based upon the evidence, can conclude [their] progress is sufficiently demonstrable and is of such a quality that the child can be returned to [them] in the near future." *K.P.*, 305 Ill. App. 3d at 180.

¶ 27 From February 16 to November 16, 2014, respondents were expected to make reasonable progress in anger-management, since domestic violence between them was "the condition [that had given] rise to the removal of the child." *C.N.*, 196 Ill. 2d at 216. To remedy that condition, DCFS quite logically required respondents to undergo anger-management counseling.

¶ 28 While the second service plan was in effect, November 2013 to May 2014, respondents attended no counseling sessions.

¶ 29 While the third service plan was in effect, May to November 2014, Stephanie DiPasquale attended no counseling sessions, and Brandon DiPasquale attended only two counseling sessions, although his therapist had recommended a session every week.

¶ 30 The trial court did not make a finding that was against the manifest weight of the evidence when it found respondents' failure to meet the goal of anger-management counseling to be a lack of reasonable progress. Therefore, we uphold the finding that respondents are "unfit persons" within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 31 B. The Finding That It Would Be in G.D.'s Best Interest To Terminate Respondents' Parental Rights

¶ 32 Respondents argue the trial court "did not accord enough weight to *** G.D.'s bond with her parents and failed to properly consider guardianship as the best interest of the child." They point out that because G.D. is 9 years old and the foster parent, Neaville, is 70, "there is a serious risk that Ms. Neaville may not be able to care for G.D. until she reaches the age of majority." Respondents acknowledge that, according to Jones's testimony, there is a backup plan should Neaville become unable to continue raising G.D.; "however," respondents say, "there was little detail on how such a transition would be handled." According to respondents, "a guardianship for G.D. by Ms. Neaville would allow [them] to work on their issues while remaining as parents to G.D. should anything happen."

¶ 33 Before addressing those arguments, let us reiterate our deferential standard of review. "The best-interests determination is *** reviewed under the manifest weight of the evidence standard." (Internal quotation marks omitted.) *In re Austin W.*, 214 Ill. 2d 31, 51-52 (2005). A finding is against the manifest evidence only if the evidence "clearly" calls for the opposite finding (*In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072 (2006)), such that "no reasonable person" could arrive at the trial court's finding on the basis of the evidence in the record (*Mizell v. Passo*, 147 Ill. 2d 420, 425-26 (1992); *Baker v. Daniel S. Berger, Ltd.*, 323 Ill. App. 3d 956, 963 (2001)).

¶ 34 We disagree it is "clearly evident" that because G.D. felt affection for respondents and because Neaville was elderly, the State failed to carry its burden of proving, by a preponderance of the evidence, that terminating respondents' parental rights would be in G.D.'s best interest. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004); *Daphnie E.*, 368 Ill. App. 3d at 1072. The trial court could have reasonably found that although G.D. felt affection for respondents (see 705 ILCS 405/1-3(4.05)(d) (West 2014)), she also felt affection for Neaville and Peet (see *id.*)

and that, additionally, she felt a "sense of security" living with them (see 705 ILCS 405/1-3(4.05)(d)(ii) (West 2014)), more so, one might infer, than when she lived with respondents. We note that the court twice interviewed G.D., *in camera*.

¶ 35 Granted, Neaville was getting on in years, but the court could have reasonably decided that her advanced age was a risk worth taking, compared to the lasting damage that could be inflicted on G.D. by requiring her to live in an environment of domestic violence and excessive, uncontrolled anger.

¶ 36 Respondents say a guardianship would preserve the parental relationship while allowing them to "work on" such "issues." Given the history in this case, however, a reasonable person could be skeptical that these "issues" ever would be "worked on."

¶ 37 In sum, G.D. has lived with Neaville since she was 14 months old, and Neaville is committed to adopting her. She appears to be thriving with Neaville and enjoying a sense of serenity and stability. Arguably, allowing Neaville to adopt G.D. would serve her "need for permanence." 705 ILCS 405/1-3(4.05)(g) (West 2014). This adoption cannot happen without the termination of respondents' parental rights. We are unable to say the trial court made a finding that was against the manifest weight of the evidence by finding that course of action would be in G.D.'s best interest.

¶ 38 III. CONCLUSION

¶ 39 For the foregoing reasons, we affirm the trial court's judgment.

¶ 40 Affirmed.