2016 IL App (4th) 150817-U

NO. 4-15-0817

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: T.D.-A. and Z.P., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13JA54
SHARNITA PATRICK,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

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

ORDER

¶ 1 *Held*: The appellate court affirmed, concluding the trial court's unfitness findings and best interest determinations were not against the manifest weight of the evidence.

¶ 2 In February 2015, the State filed a motion to terminate (1) respondent-mother Sharnita Patrick's parental rights to T.D.-A. (born September 2, 2008) and Z.P. (born August 20, 2013), (2) father Paul DuPont's parental rights to T.D.-A., (3) putative-father Burnell Staples' parental rights to Z.P., and (4) any unknown father's parental rights to Z.P. In August 2015, the trial court found the State proved by clear and convincing evidence respondent, DuPont, and any unknown fathers of Z.P. were unfit but failed to prove the same for Staples. In October 2015, the court determined it was in the best interest of the minors to terminate the respective parental rights of respondent, Dupont, and any unknown father to Z.P. Respondent appeals, arguing the

trial court's unfitness findings and best-interest determinations were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On October 30, 2013, the State filed a petition for adjudication of wardship, alleging T.D.-A. and Z.P. were neglected.

¶ 5 In a December 13, 2013, adjudicatory order, the trial court adjudicated the minors neglected as they were residing in an environment injurious to the their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). The court's finding was based, in part, on the following facts: (1) on October 8, 2013, the Department of Children and Family Services (DCFS) received a call from Staples complaining respondent, with an infant in her car, had chased him down after he sought an order of protection; and (2) on October 10, 2013, a police officer discovered respondent left the minors unattended in her home for approximately 45 minutes.

¶ 6 In a January 15, 2014, dispositional order, the trial court made the minors wards of the court and placed custody and guardianship with DCFS.

¶ 7 On February 9, 2015, the State filed a motion to terminate (1) respondent's parental rights to T.D.-A. and Z.P., (2) DuPont's parental rights to T.D.-A., (3) Staples' parental rights to Z.P., and (4) any unknown father's parental rights to Z.P. As to respondent, the State alleged she was an unfit parent as she (1) failed to make reasonable efforts to correct the conditions that were the basis for the minors removal (750 ILCS 50/1(D)(m)(i) (West 2012)) (count I); (2) failed to make reasonable progress toward the return of the minors within the initial nine-month period following the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2012)) (count II); (3) failed to maintain a reasonable degree of interest, concern, or responsibility as to

the minors' welfare (750 ILCS 50/1(D)(b) (West 2012)) (count III); and (4) was incarcerated at the time the motion was filed, had repeatedly been incarcerated as a result of criminal convictions, and the repeated incarceration prevented her from discharging her parental responsibilities (750 ILCS 50/1(D)(s) (West 2012)) (count IV).

¶ 8 A. The Fitness Hearing

¶ 9 On June 9, June 16, August 4, and August 31, 2015, the trial court held a fitness hearing on the State's motion to terminate the parental rights of respondent, Staples, DuPont, and any unknown father to Z.P. At the conclusion of the hearing, the court found the State proved by clear and convincing evidence respondent, DuPont, and any unknown father of Z.P. were unfit but failed to prove the same for Staples. We review the evidence as it relates to respondent.

¶ 10 1. *Dr. Susan Minyard*

¶ 11 Dr. Susan Minyard, a clinical psychologist, testified, on September 3, 2014, she conducted a psychological evaluation of respondent. Dr. Minyard found respondent to be "very emotionally reactive" and had difficulty modulating her emotions. Respondent's predominant emotion appeared to be anger. Respondent was hypersensitive to perceived disrespect and would react in an extreme manner, which Dr. Minyard found concerning as children can be disrespectful. Respondent's ability to control her emotions had been an issue for many years. Dr. Minyard expressed concern regarding respondent's lack of insight to, and recognition of, the problems with controlling her emotions. Respondent minimized and normalized her past behavior. She largely attributed her involvement with DCFS to other individuals.

¶ 12 Respondent was below average in social intelligence, which Dr. Minyard found to be an issue for parenting. Respondent appeared self-protected, defensive, and focused on her

own needs. Dr. Minyard was concerned with respondent's ability to place the minors' needs ahead of her own. Dr. Minyard opined respondent's conflicts with Staples created the potential for future domestic violence. Dr. Minyard was also concerned with the minors witnessing respondent's behavior and learning by example.

¶ 13 Based on her evaluation, Dr. Minyard diagnosed respondent with mood disorder, not otherwise specified, neglect of a child, and personality disorder, not otherwise specified, with narcissistic and antisocial traits. Dr. Minyard recommended maintaining supervised visitation and for respondent to continue with services. Dr. Minyard opined, for any improvement to occur, respondent would need to acknowledge change was necessary and her actions in the past were inappropriate. Dr. Minyard recommended supervised visitation in an agency setting given respondent's volatility and threatening behavior.

¶ 14 2. *Arnetha Truss*

¶ 15 Arnetha Truss, the DCFS case manager from October 2013 through September 2014, testified regarding continuous conflicts between respondent and Staples. Truss repeatedly advised communication between respondent and Staples be halted, which respondent ignored. Truss recalled between 5 and 10 conversations with Staples regarding conflicts he had with respondent between January and September 2014. On one occasion, Staples reported respondent vandalized his property. On February 27, 2014, Truss met with respondent to discuss her interactions with Staples, during which respondent admitted to creating a fake Facebook account to contact Staples, denied vandalizing Staples' property, and asserted Staples was abusive. On several occasions, Truss recommended Staples obtain an order of protection against respondent. Staples obtained an emergency order of protection.

¶ 16 Truss testified regarding several verbal altercations with respondent. In July 2014, following a decision to allow Staples' then paramour to be present during Staples' visits with Z.P., respondent arrived at Truss's office irate, yelling and screaming. Truss attempted to explain the reasoning behind the decision, to which respondent was not receptive, and respondent stormed out of the office. On another occasion, an altercation occurred between respondent and Truss's supervisor. As to respondent's visits with the minors, Truss found no issues.

¶ 17 3. *Robin Strauss*

¶ 18 Robin Strauss, the DCFS case manager from September through November 2014, testified, during a September 8, 2014, meeting, respondent became upset and was yelling at everyone in the meeting. At an October 14, 2014, home visit, respondent became aggressive and defensive, which caused Strauss to end the visit.

¶ 19 Strauss testified, on September 8, 2014, Staples indicated respondent would continuously call and text him. Respondent indicated to Strauss she believed contact was necessary to coparent Z.P. Strauss testified she continuously advised respondent to halt communications with Staples and discussed the negative impact such communication would have on the minors.

¶ 20 Strauss indicated respondent initially visited with the minors at the family advocacy center, but due to respondent's escalating contact with Staples and the physical threats she made to others in the community, visits were changed to the DCFS office. Strauss testified respondent maintained contact with her and attended visits with the minors.

¶ 21 4. *Maryla Burke*

¶ 22 Maryla Burke, who provided domestic-violence group counseling to respondent, testified respondent was an active participant but found it very difficult to understand the impact of her actions on the minors. Respondent was ultimately terminated from counseling due to absences.

¶ 23 5. *Brittany Weller*

¶ 24 Brittany Weller, the DCFS case manager from January through June 2015, testified respondent was imprisoned during that time and visits with the minors were halted due to the imprisonment.

¶ 25 6. *Prior Convictions*

¶ 26 The trial court took judicial notice of respondent's convictions in Champaign County case Nos. 14-CF-523 (felony retail theft), 14-CF-1944 (forgery), 05-CF-550 (obstruction of justice), and 99-CF-62 (unlawful delivery of a controlled substance).

¶ 27 7. *Respondent*

¶ 28 Respondent testified she had been imprisoned for retail theft since November 14, 2014, and expected to be released in August 2016. Prior to her imprisonment, she visited with the minors, completed a DCFS parenting program, and participated in counseling. Respondent testified she halted communication with Staples after a meeting with Truss, except for one occasion where Z.P. had an emergency and her caseworkers were not returning her calls. Respondent denied becoming defensive or aggressive toward Strauss.

¶ 29 While imprisoned, respondent completed a parent-training program, a domestic-violence class, and a problem-solving class. She also participated in a class about insecurity, a boundaries group, an anger-management group, and a lifestyle-redirection group, and she

volunteered in the Women of Victory Unit. Respondent tried to maintain contact with her caseworker. Although respondent was denied visitation and telephone calls with the minors, she sent letters and participated in Operation Storybook, where she recorded herself reading books for the minors.

¶ 30 8. *Lori DeYoung*

¶ 31 Lori DeYoung, T.D.-A.'s counselor, indicated respondent had communicated with T.D.-A. by letter since being imprisoned.

¶ 32 9. *Staples*

¶ 33 Staples testified he sought multiple orders of protection against respondent due to the fighting, the stalking, and respondent's use of his Google and Facebook accounts. Staples testified respondent would follow him around town, yell obscenities, jump out of her car and "swing" on him, and repeatedly call and text him, to which he occasionally responded. On three occasions Staples sought a plenary order of protection, all of which were unsuccessful.

¶ 34 Following this evidence, the court found the State proved by clear and convincing evidence respondent was an unfit parent as she (1) failed to make reasonable progress toward the return of the minors within the initial nine-month period following the adjudication of neglect (count II); (2) failed to maintain a reasonable degree of responsibility as to the welfare of the minors (count III—responsibility); and (3) was incarcerated at the time of the filing of the motion to terminate parental rights, had repeatedly been incarcerated as a result of criminal convictions, and her repeated incarceration had prevented her from discharging her parental responsibilities (count IV).

¶ 35 B. The Best-Interest Hearing

¶ 36 On October 6, 2015, the trial court held a best-interest hearing. The court took judicial notice of a September 22, 2015, best-interest report and heard testimony from Eugenia Dupont, T.D.-A.'s paternal grandmother.

¶ 37 T.D.-A. resided in foster care with Eugenia. T.D.-A. was doing very well in the home and had a strong bond with her grandmother. T.D.-A was healthy, happy, and well-nourished and enjoyed going to school. Z.P. resided in a licensed traditional foster home. Z.P. was doing very well in the home and formed a strong bond with his foster parent. Z.P. was being cared for by his foster parent and Staples. Z.P. was healthy and happy and enjoyed attending day care.

¶ 38 Respondent had been imprisoned since November 21, 2014, serving a 4 1/2 year prison sentence. Respondent's projected parole date was February 13, 2017. While imprisoned, respondent completed several programs, including those on parenting, domestic violence, and insecurities.

¶ 39 The trial court found respondent was unable to provide stability and permanency for T.D.-A. and Z.P. and was a disruptive influence on the minors. The court determined it was in T.D.-A.'s and Z.P.'s best interest to terminate respondent's parental rights. By an October 7, 2015, order, the trial court terminated respondent's parental rights to both minors.

¶ 40 This appeal followed.

¶ 41 II. ANALYSIS

¶ 42 On appeal, respondent argues the trial court's unfitness findings and best-interest determinations were against the manifest weight of the evidence. In response, the State asserts the court's order terminating respondent's parental rights was appropriate in all respects.

¶ 43 A. Unfitness Findings

¶ 44 Under section 2-29(2) of the Juvenile Court Act of 1987 (705 ILCS 405/2-29(2) (West 2012)), the involuntary termination of parental rights involves a two-step process. First, the State must prove by clear and convincing evidence the parent is "unfit" with respect to each child as defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2012)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006); *In re D.C.*, 209 Ill. 2d 287, 300, 807 N.E.2d 472, 479 (2004). Only one ground for a finding of unfitness is necessary if it is supported by clear and convincing evidence. *In re Gwynne P.*, 215 Ill. 2d 340, 349, 830 N.E.2d 508, 514 (2005); *In re M.R.*, 393 Ill. App. 3d 609, 613, 912 N.E.2d 337, 342 (2009).

¶ 45 As the trial court has the best opportunity to observe the demeanor and conduct of the parties and witnesses, it is in the best position to determine the credibility and weight of the witnesses' testimony. *In re E.S.*, 324 Ill. App. 3d 661, 667, 756 N.E.2d 422, 427 (2001). We will not disturb a trial court's unfitness findings unless they are against the manifest weight of the evidence. See *Gwynne P.*, 215 Ill. 2d at 354, 830 N.E.2d at 516-17. A decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1072, 859 N.E.2d 123, 141 (2006).

¶ 46 The trial court found respondent was an unfit parent as defined in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2012)). Section 1(D)(m)(ii) provides a parent will be considered an "unfit person" if he or she fails to make "reasonable progress" toward the return of a child within nine months following an adjudication of neglected. 750 ILCS 50/1(D)(m)(ii) (West 2012). "Reasonable progress" has been defined as " 'demonstrable movement toward the goal of reunification.' " *In re C.N.*, 196 Ill. 2d 181, 211,

752 N.E.2d 1030, 1047 (2001). This is an objective standard, focusing on the amount of progress toward the goal of reunification one can reasonably expect under the circumstances. *In re C.M.*, 305 Ill. App. 3d 154, 164, 711 N.E.2d 809, 815 (1999). The benchmark for measuring a parent's progress toward reunification "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." *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050.

¶ 47 The applicable nine-month period during which reasonable progress is to be measured commences on the date of the adjudication of neglect. *In re Jacien B.*, 341 Ill. App. 3d 876, 882, 793 N.E.2d 1009, 1014 (2003). In considering whether reasonable progress has been made, the trial court may consider only evidence of parental conduct occurring during the statutory nine-month period following the adjudication of neglect. *In re D.L.*, 191 Ill. 2d 1, 12, 727 N.E.2d 990, 996 (2000).

¶ 48 In a December 13, 2013, adjudicatory order, the trial court adjudicated the minors to be neglected as they were residing in an environment injurious to the their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). Within the nine months following the adjudication of neglect, the evidence indicated respondent (1) continued to be emotionally reactive and struggled with controlling her emotions, (2) failed to acknowledge change was necessary in her management of her emotional state, (3) failed to recognize or account for her inappropriate past behavior, and (4) continued to communicate with Staples against continuous advice to halt such communication. Based on the evidence presented, the trial court's finding of unfitness for respondent's failure to

make reasonable progress toward the return of the minors was not against the manifest weight of the evidence.

¶ 49 As only one ground for a finding of unfitness is necessary to uphold the trial court's judgment, we need not review the other bases for the court's unfitness findings. See *In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 50 B. Best-Interest Determinations

¶ 51 If the trial court makes a finding of unfitness, the State must then prove by a preponderance of the evidence it is in the child's best interest parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (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. *D.T.*, 212 Ill. 2d at 364, 818 N.E.2d at 1227.

¶ 52 The trial court must consider the following factors, in the context of the minor's age and developmental needs, in determining whether termination is in a child's best interest: (1) the physical safety and welfare of the child, including food, shelter, health, and clothing; (2) the development of the child's identity; (3) the child's background and ties, including familial, cultural, and religious; (4) the child's sense of attachments; (5) the child's wishes and long-term goals; (6) the child's community ties, including church, school, and friends; (7) 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; (8) the uniqueness of every family and child; (9) the risks attendant to entering and being in substitute care; and (10) the preferences of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2012).

¶ 53 On review, this court will not reverse a trial court's best-interest determination

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). As previously stated, a decision will be found to be against the manifest weight of the evidence only if the facts clearly demonstrate the court should have reached the opposite conclusion. *Daphnie E.*, 368 Ill. App. 3d at 1072, 859 N.E.2d at 141.

¶ 54 Both T.D.-A. and Z.P. were residing in nurturing foster homes. Both minors had developed strong bonds with their caregivers. T.D.-A. enjoyed attending school, and Z.P. enjoyed attending day care. Conversely, respondent remained incarcerated, with a projected parole date of February 13, 2017. Respondent was unable to adequately care for the minors for the foreseeable future. Given the evidence presented, the trial court's determinations it was in T.D.-A.'s and Z.P.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 55 III. CONCLUSION

¶ 56 We affirm the trial court's judgment.

¶ 57 Affirmed.