2016 IL App (4th) 150849-U

NOS. 4-15-0849, 4-15-0850 cons.

FILED
March 2, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.R., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Vermilion County
v. (No. 4-15-0849)	)	No. 14JA78
BRIANNE HOWELL,	)	
Respondent-Appellant.	)	
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In re: A.L., a Minor,	)	No. 14JA79
THE PEOPLE OF THE STATE OF ILLINOIS,	)	
Petitioner-Appellee,	)	
v. (No. 4-15-0850)	)	Honorable
BRIANNE HOWELL,	)	Claudia S. Anderson,
Respondent-Appellant.	)	Judge Presiding.

PRESIDING JUSTICE KNECHT delivered the judgment of the court.
Justices Holder White and Steigmann 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 June 2015, the State filed petitions to terminate respondent Brianne Howell's parental rights to A.R. (born August 25, 2010) and A.L. (born August 23, 2009). In October 2015, the trial court found respondent to be unfit and determined it was in the best interest of the minors to terminate her parental rights. 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 June 19, 2014, the State filed petitions for adjudication of wardship, alleging A.R. and A.L. were neglected.

¶ 5 In a September 12, 2014, adjudicatory order, the trial court adjudicated the minors neglected as they were residing in an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). The factual basis provided respondent's home was incredibly messy, with animal feces throughout.

¶ 6 In a November 14, 2014, dispositional order, the trial court made the minors wards of the court and placed custody and guardianship with the Department of Children and Family Services (DCFS).

¶ 7 On June 23, 2015, the State filed petitions to terminate respondent's parental rights to A.R. and A.L. Respondent has failed to include in the record on appeal the petition relating to A.R. As to the petition relating to A.L., the State alleged respondent was an unfit parent as she (1) abandoned the minor (750 ILCS 50/1(D)(a) (West 2012)); (2) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minor's welfare (750 ILCS 50/1(D)(b) (West 2012)); (3) deserted the minor for more than three months (750 ILCS 50/1(D)(c) (West 2012)); (4) failed to make reasonable efforts to correct the conditions that were the basis for the minor's removal within the nine months following the adjudication of neglected (750 ILCS 50/1(D)(m)(i) (West 2012)); and (5) failed to make reasonable progress toward the return of the minor within the nine months following the adjudication of neglected (750 ILCS 50/1(D)(m)(ii) (West 2012)).

¶ 8 On September 30, 2015, the State filed amended petitions to terminate respondent's parental rights to A.R. and A.L. Respondent has failed to include in the record on appeal the amended petition relating to A.L. As to the amended petition relating to A.R., the State alleged respondent was an unfit parent based on the five allegations presented in its June 23, 2015, petition relating to A.L., as well as an additional allegation respondent was depraved (750 ILCS 50/1(D)(i) (West 2012)).

¶ 9 A. The Fitness Hearing

¶ 10 On October 2, 2015, the trial court held a fitness hearing. The following exhibits were admitted without objection: (1) a December 9, 2014, DCFS service plan; (2) an April 8, 2015, DCFS service plan; (3) a June 22, 2015, DCFS service plan; and (4) certified copies of respondent's felony convictions in Vermilion County case Nos. 04-CF-44, 06-CF-186, and 15-CF-129.

¶ 11 1. *Lindsey Ketcherside-Ahart*

¶ 12 Lindsey Ketcherside-Ahart, a DCFS case manager, testified respondent's last visit with the minors was on December 3, 2014, and her visits prior to that date were inconsistent. On October 15, 2014, respondent tested positive for "benzos." On November 25, 2014, respondent tested positive for amphetamines.

¶ 13 Respondent was required to maintain contact with DCFS and provide updated contact information. Between January 6 and April 17, 2015, no contact existed between respondent and DCFS.

¶ 14 On April 17, 2015, DCFS received a letter from respondent; respondent had been incarcerated since March 16, 2015, on charges of possession of methamphetamine precursors.

While incarcerated, respondent inquired into the minors' welfare and sent letters and cards to the minors.

¶ 15 In May 2015, respondent was convicted and sentenced to eight years' imprisonment for possession of methamphetamine precursors. While imprisoned, respondent completed "Parenting on the Inside," participated in services, and requested and received a copy of her service plan.

¶ 16 Ketcherside-Ahart testified respondent had not completed any required services, which included substance-abuse treatment, psychiatric services, a neurological evaluation, trauma-focused individual therapy, parenting classes, and a psychological evaluation. Throughout DCFS involvement, respondent was unemployed and had inadequate housing.

¶ 17 2. *Respondent*

¶ 18 Respondent had five children, three of whom were in her parents' custody. Respondent testified, in December 2014, she continuously contacted her caseworker, as often as 10 to 15 times a day, but her caseworker rarely answered her calls. Respondent indicated she left messages for her caseworker, indicating she was relapsing. Respondent testified, because her caseworker was not returning her calls, she sought help from an independent facility for services. Respondent testified she failed to contact her caseworkers after the first week of January because she had relapsed. Respondent maintained she tested positive on October 15, 2014, because of her anxiety prescription, which she had provided to her caseworker.

¶ 19 While imprisoned, respondent completed a parenting class and enrolled in various groups, therapy, and counseling. Respondent testified her projected parole date was March 2019, but she could be released in August 2016 on work release. Work release required

respondent to live in a transitional house in Aurora, where the minors were unable to reside.

¶ 20 Following this evidence, the trial court found the State proved by clear and convincing evidence respondent was an unfit parent as she (1) failed to maintain a reasonable degree of interest, concern, or responsibility as to the minors' welfare; (2) failed to make reasonable efforts to correct the conditions that were the basis for the removal of the minors within the nine months following the adjudications of neglected; (3) failed to make reasonable progress toward the return of the minors within the nine months following the adjudications of neglected; and (4) was depraved.

¶ 21 B. The Best-Interest Hearing

¶ 22 Following the fitness hearing, the trial court held a best-interest hearing. Ketcherside-Ahart testified the minors had been residing in a single-parent household since August 2014. The foster mother was willing to provide permanency for both minors. The minors had a strong relationship with the foster mother's older son, who also lived in the home. Ketcherside-Ahart testified she had no concerns regarding the minors' placement.

¶ 23 Both minors had successfully completed counseling. An Individualized Education Plan was investigated for A.L. as he was having behavioral issues. Since his placement, A.R.'s speech had improved, but he likely would need speech therapy in the future.

¶ 24 While imprisoned, respondent began to reengage in services and expressed interest in the minors. Respondent had not seen the minors since December 2014.

¶ 25 Following this evidence, the trial court found it was in the minors' best interest to terminate respondent's parental rights.

¶ 26 This appeal followed.

¶ 27 II. ANALYSIS

¶ 28 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 findings were appropriate in all respects.

¶ 29 A. Unfitness Findings

¶ 30 The involuntary termination of parental rights involves a two-step process. 705 ILCS 405/2-29(2) (West 2012)). 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). 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).

¶ 31 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.

¶ 32 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).

¶ 33 In a September 12, 2014, adjudicatory order, the trial court adjudicated the minors neglected as they were residing in an environment injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). The factual basis provided respondent's home was incredibly messy, with animal feces throughout. Within the nine months following the adjudications of neglected, respondent (1) failed to secure adequate housing, (2) failed to secure employment, (3) failed to complete required services, (4) had inconsistent visits with the minors, (5) tested positive for "benzos," (6) tested positive for amphetamines, (7) failed to maintain contact with DCFS, (8)

failed to provide DCFS with contact information, and (9) was convicted and sentenced to eight years' imprisonment for possession of meth precursors. 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.

¶ 34 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).

¶ 35 B. Best-Interest Determinations

¶ 36 Once the trial court makes a finding of unfitness, the State must 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.

¶ 37 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).

¶ 38 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.

¶ 39 The minors had been residing with their foster mother since August 2014. The foster mother was willing to provide permanency for both minors, and the minors had a strong relationship with her older son. DCFS had no concerns regarding the minors' placement. Both minors successfully completed counseling, and concerns regarding A.L's behavior and A.R.'s speech were being addressed. Conversely, respondent was unable to adequately provide care for the minors for the foreseeable future due to her imprisonment. Given the evidence presented, the trial court's determinations it was in the minors best interest to terminate respondent's parental rights were not against the manifest weight of the evidence.

¶ 40 III. CONCLUSION

¶ 41 We affirm the trial court's judgment.

¶ 42 Affirmed.