2016 IL App (4th) 150968-U

NO. 4-15-0968

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

FILED
April 20, 2016
Carla Bender
4th District Appellate
Court, IL

In re: D.K., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 14JA22
FARRON KELLY,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Turner and Holder White concurred in the judgment.

ORDER

¶ 1 *Held*: The appellate court affirmed the order terminating respondent's parental rights, concluding the trial court's fitness and best-interest findings were not against the manifest weight of the evidence.

¶ 2 In October 2015, the trial court found respondent, Farron Kelly, unfit to parent his minor child, D.K., and, in December 2015, the court found it was in the minor's best interest to terminate respondent's parental rights. Respondent appeals, arguing the court's findings were against the manifest weight of the evidence. We affirm.

¶ 3 I. BACKGROUND

¶ 4 On March 14, 2014, the State filed a petition for adjudication of neglect in the interest of D.K., an eight-year-old boy born to respondent and Elizabeth Kimbrell on April 3, 2005. Kimbrell is not a party to this appeal. In the petition, the Illinois Department of Children and Family Services (DCFS) pursued the adjudication and disposition of neglect, alleging D.K.'s

environment was injurious to his welfare when he resided with his mother because he was exposed to domestic violence and substance abuse (705 ILCS 405/2-3(1)(b) (West 2012)).

¶ 5 DCFS was notified D.K. and Kimbrell were living with her paramour at a motel. Both adults abused substances and became violent when intoxicated. On March 1, 2014, both D.K. and Kimbrell called a relative for assistance because the paramour was battering Kimbrell. When DCFS got involved, Kimbrell agreed to an open intact case where she would participate in substance-abuse treatment and not allow D.K. to have contact with her paramour. However, on March 13, 2014, Kimbrell moved herself and D.K. into her paramour's motel room. DCFS took D.K. into protective custody and placed him in relative foster care with his maternal cousin and her fiancé. DCFS referred to respondent as the "non-offending parent," noting he was not involved in the incidents leading to D.K.'s protective custody.

¶ 6 On May 8, 2014, after a hearing where (1) the minor's mother admitted the allegations of neglect relating to D.K.'s exposure to substance abuse, and (2) respondent waived adjudication, the trial court entered an adjudicatory order. On June 5, 2014, the court conducted a dispositional hearing. Respondent did not appear personally, but he appeared through counsel. The court found both parents unfit and unable for reasons other than financial circumstances alone, to care for, protect, train, and discipline the minor. The court noted respondent (1) had a history of domestic violence with Kimbrell when they were together, (2) was incarcerated "during much of the respondent minor's life," and (3) has a "significant criminal history." The court placed the custody and guardianship of the minor with DCFS, with supervised visits for both parents. The court entered the dispositional order on June 11, 2014.

¶ 7 According to a permanency order entered in September 2014, respondent had tested positive for cocaine in July 2014. He participated in a substance-abuse evaluation in

November 2014, after which he was recommended for level one treatment. The court ordered respondent to submit to random drug screens at least once per week. During the fall of 2014, D.K. was moved from his initial relative placement into another relative placement, where he remained through the life of the case.

¶ 8 On July 6, 2015, the State filed a petition to terminate both parents' parental rights. With regard to respondent, the State alleged he was unfit because he failed to (1) make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014)) (count I); (2) make reasonable progress toward the return of the minor within the initial nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014)) (count II); and (3) maintain a reasonable degree of interest, concern, or responsibility as to the welfare of the minor (750 ILCS 50/1(D)(b) (West 2014)) (count III).

¶ 9 In October 2015, the trial court conducted a fitness hearing, wherein the State presented the following testimony related to respondent. The State called its expert witness, psychologist Dr. Susan Minyard, to testify regarding the psychological evaluation, including the intelligence quotient (IQ) test, she performed on respondent in December 2014. She said respondent's IQ was not such that it would prevent him from effectively parenting D.K. However, she said he had some brain damage from his history of mixed martial arts fighting and his involvement in nine car accidents. Dr. Minyard opined respondent minimized his use of substances and various aspects of his criminal history. She diagnosed him with substance-abuse issues, including issues with cocaine, alcohol, and cannabis, and a personality disorder not otherwise specified. Based upon respondent's pending substance-abuse and criminal issues, Dr. Minyard recommended respondent's visits with D.K. remain supervised. She recommended respondent participate in individual therapy.

¶ 10 Shannon Schneider, a clinical therapist with Lutheran Social Services (LSS), testified respondent successfully completed his 11-session parenting class in October 2014. Johniesha Hobbs, an LSS case manager, testified she referred respondent to a substance-abuse evaluation, a parenting course, and individual counseling. Hobbs testified, as a result of respondent's evaluation, he was recommended for substance-abuse treatment at Prairie Center. During her three-month involvement with the case, Hobbs said she supervised a "handful" of respondent's visits with D.K. and saw no issues of concern.

¶ 11 Angela Shy, the LSS case manager who succeeded Hobbs, testified respondent participated in all required drug drops and tested negative for each until February 11, 2015, when he tested positive for cocaine. His positive drug test ended his third-party visitation with D.K., which had been implemented in December 2014. Respondent had missed requested drug drops on January 5, 2015, and January 15, 2015. He missed another drop on February 20, 2015. Shy testified she contacted respondent on February 25, 2015, and asked him to submit to a drop. Respondent advised he would test positive for alcohol if he tested that day.

¶ 12 Edward King, a substance-abuse counselor at Prairie Center, testified respondent was recommended, based upon his November 6, 2014, assessment, to complete 26 group sessions, attend individual sessions, and participate in random drug drops. Respondent had been diagnosed with cocaine, alcohol, and cannabis dependence. Respondent did not complete the 26 group sessions, attending only 9 by the time he tested positive for cocaine on February 11, 2015. Had respondent attended all consecutive sessions, he would have completed his group treatment by May 2015. Respondent began individual sessions in November 2014, but he had "numerous large gaps in attendance." The outreach worker at Prairie Center attempted to contact respondent to encourage his involvement, but as of July 6, 2015, respondent was discharged unsuccessfully

because he had left the treatment program against the advice of the staff. Respondent initially denied using any alcohol but, according to King, toward the end of the treatment, he admitted using alcohol "very minimally."

¶ 13 Respondent testified on his own behalf. He admitted he did not successfully complete his substance-abuse treatment. He said he attended 12 to 14 of the 26 group sessions and 4 or 5 of the individual sessions. He missed sessions "probably [because he was] working late." Although he felt he received a benefit from those sessions, he admitted he relapsed in February 2015. He has been clean since, and he is employed full-time. His last visit with D.K. was in March 2015. He said he was not aware of any issues relating to his visits, which he had regularly attended before the visits stopped. He has attempted to have his visits reinstated, and he is willing to resume his substance-abuse treatment. Respondent testified he cooperated with the caseworkers and always made sure they had his contact information. Respondent rested.

¶ 14 After the presentation of evidence and arguments from counsel, the trial court found the State had sufficiently proved respondent was an unfit parent based upon the allegations in count I (his failure to make reasonable efforts to correct the conditions that were the basis for the removal of the minor (750 ILCS 50/1(D)(m)(i) (West 2014))), and count II (his failure to make reasonable progress toward the return of the minor within nine months of the adjudication of neglect (750 ILCS 50/1(D)(m)(ii) (West 2014))), but not proved as to the allegations in count III. The court stated as follows:

> "And the evidence that sustains the findings as to count I and II are similar. Efforts, of course, is more subjective, and so it has to be adjudged in light of the court's belief of [respondent's] subjective make-up, his ability, and the efforts that he does to correct

conditions. Progress, I think has a more express definition, it's an objective test, and it's what the appellate court says is that benchmark for measuring a parent's progress towards the return of the child; encompasses parents' compliance with the service plans, 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 became known, and which would prevent the court from returning custody of the child to the parent. Then, at the end of the nine-month period there is reasonable progress when the court can conclude that in the near future, the court would be able to order the child's return to parental custody. Because it's said at that point that a parent will fully comply with the directives previously given to the parent in order to gain, regain custody of the child.

So, in regard to progress, had that occurred as of the nine months ending February 8[, 2015], and by clear and convincing evidence? It had not.

Clearly [respondent] had engaged in some services to which he had been referred, and had succeeded in some services, particularly with respect to parenting classes; was a well-attended, well-involved student, for lack of a better description, who made progress towards what he was supposed to learn in terms of parenting.

That's important because of course the history of the case shows, I mean, historically [respondent] had not been in a position to exercise parental custody, and needed to regain—or gain that ability, and the point of the parenting classes he attended did well, integrated parenting skills. Certainly in his favor, and certainly does show some efforts on his part.

But the—the court also has to consider, other than the express reasons for adjudication—of course I'm relying on Judge [Richard P.] Klaus's order and the findings, which are now part of the record by judicial notice—and in his dispositional order, specifically pointed out issues of domestic violence, and with respect to [respondent], the prior criminal history. But then it becomes apparent, also by the time of disposition and when assessments are done, that [respondent] has substantial need for substance[-]abuse treatment.

And that, the best way I can put it, has been his downfall with respect to efforts and progress. And it becomes apparent enough to Judge Klaus, because, who's ruling at that time, because Judge Klaus makes clear in his order, in the dispositional order, that the respondent mother and father are to refrain completely from the use of all mood- or mind-altering substances, including alcohol, cannabis, and controlled substances. So why is that important? Well, it's one of the court's directives, and it's one of

the things that the respondent father needs to do to correct conditions.

* * *

So really the most significant issue with respect to his efforts and progress comes down to how he's done with regard to dealing with the issue of substance abuse. And that, unfortunately, as we get to late 2014, November and then December, we see a coincidence of events.

One, a progressive withdrawal from treatment, a failure to make progress in treatment; then missed drops, then cocaine use in February of 2015. So he's digressing from any progress that may have earlier been made. ***.

***

So clearly he had not made reasonable efforts at tackling one of the essentials in order to regain custody of his child, and that was substance abuse.

With respect to progress, it's even more clear that, as of the time of February [8, 2015], when nine months past adjudication comes up, really was, if at all, farther from being able to regain custody with his issues of substance abuse, than any closer. But clearly at that point it was not where the court in the near future would be able to order the child to be returned to parental custody. There would have had to have been, at that point, according to the

> evidence, a substantial, long-term period of compliance with court orders, compliance with treatment, and successful engagement with treatment. Long past that, so clearly was not close to restoration of custody at that time."

¶ 15 On December 1, 2015, the trial court conducted the best-interest hearing, where the State presented only LSS's best-interest report as evidence. The report recommended respondent's parental rights be terminated. D.K. was in relative placement, residing with his paternal aunt and uncle, and doing well in this placement. The foster parents were willing to be D.K.'s legal guardians, but they believed adopting him would negatively affect the family dynamics. The State presented no further evidence.

¶ 16 Respondent testified he was still employed full-time. He had not visited with D.K. because the caseworker insisted the visits occur in Leroy, Illinois. Respondent wanted the visits to be held locally so D.K. could also visit with his grandmother, who had custody of his brother. Respondent said he has a bond with his son even though he has not visited with him since March 2015. He claims one of the caseworkers told him his visitation rights had been terminated.

¶ 17 Based upon the evidence presented, the trial court found it to be in D.K.'s best interest to terminate respondent's parental rights. The court noted "how [D.K.'s] needs are best met with his current placement and how that placement can provide permanency for him and also preserve some familiar ties with respect to that side of the family." The court awarded DCFS custody and guardianship of D.K.

¶ 18 This appeal followed.

¶ 19 II. ANALYSIS

¶ 20 A. Finding of Unfitness

¶ 21 Section 1(D)(m)(i) of the Adoption Act (750 ILCS 50/1(D)(m)(i) (West 2014)) defines a parent as being unfit for failing "to make reasonable efforts to correct the conditions that were the basis for the removal of the child from the parent during any 9-month period following the adjudication of neglected or abused minor." " 'Reasonable effort' is a subjective standard and is associated with the goal of correcting the conditions which caused the child's removal. [Citation.] The focus is on the amount of effort reasonable for the particular parent involved." *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004). "In contrast to the goal of reasonable progress, reasonable efforts relate to the much narrower goal of correcting the conditions that were the basis for the removal of the child from the parent." *In re J.A.*, 316 Ill. App. 3d 553, 565 (2000).

¶ 22 Respondent urges this court to reverse the trial court's finding he was an unfit parent on this ground—his failure to make reasonable efforts. His argument in support consists of two sentences. He contends: "In this case, D.K. was removed because of the misbehavior of [Kimbrell and her paramour]. The removal had nothing to do with [respondent] ***, who was powerless to affect the offending behavior." Without providing authoritative support for his position, respondent claims the court's finding of unfitness on this ground was "[c]onsequently" against the manifest weight of the evidence.

¶ 23 As this court has previously held, "[i]t is a rudimentary rule of appellate practice that an appellant may not make a point merely by stating it without presenting any argument in support. See *Girard v. White*, 356 Ill. App. 3d 11, 17 *** (2005) ('bare contentions that fail to cite any authority do not merit consideration on appeal')." *Housing Authority of Champaign*

County v. Lyles, 395 Ill. App. 3d 1036, 1040 (2009). Nevertheless, in light of the importance of the issue presented, we will review the merits of respondent's claim.

¶ 24 In this case, D.K. was adjudicated a neglected minor due to his exposure to substance abuse and domestic violence. Specifically, the petition for adjudication of neglect alleged D.K.'s environment was injurious to his welfare when he resided with Kimbrell due to D.K.'s exposure to those two conditions, which caused D.K.'s removal from Kimbrell's care. In the dispositional order entered by Judge Klaus on June 11, 2014, the court specifically found respondent was unfit and unable to care for D.K. because of his own history of domestic violence and his criminal record. At that point, the court ordered respondent to cooperate fully and completely with DCFS by complying with the service plans and to "correct the conditions that require the minor to be in care and be adjudged a ward of the court." The court also ordered respondent to "refrain completely from the use of all mood or mind altering substances."

¶ 25 Subsequently, respondent was referred for a substance-abuse evaluation after he tested positive for cocaine in July 2014. As a result of his November 2014 assessment, respondent was recommended to participate in substance-abuse treatment. That is, according to DCFS, respondent would not be able to regain the care and custody of D.K. unless and until he corrected this condition of his abuse of substances.

¶ 26 This court has held that when making a determination under either the bases of reasonable efforts or reasonable progress, the trial court may not consider any evidence beyond the statutorily prescribed nine months from the date of the adjudication of neglect. *In re K.B.*, 314 Ill. App. 3d 739, 749 (2000); see also *In re Brianna B.*, 334 Ill. App. 3d 651, 656 (2002). In this case, the applicable nine-month period was May 8, 2014, to February 8, 2015. During that time frame, respondent failed to comply with the court's directive to refrain from the use of

substances and to adequately participate in the recommended substance-abuse treatment. He attended only 9 of his 26 group sessions during this nine-month period. Had he attended all consecutive sessions, he was on track to successfully complete the program by May 2015, having begun in November 2014. He also failed to participate in his individual sessions, having "numerous large gaps in attendance." As the trial court noted, respondent's "downfall" with respect to his efforts was his substance abuse and his failure to comply with treatment recommendations. These failures relating to his use of intoxicating substances and noncompliance with treatment unequivocally demonstrated respondent's failure to make a reasonable effort to correct the conditions that were the basis for the removal of D.K. from respondent's care. We conclude the court's finding of unfitness was not against the manifest weight of the evidence. Because only one ground of unfitness is sufficient to support a subsequent termination of parental rights, we need not address respondent's argument with respect to the second ground. See *In re C.W.*, 199 Ill. 2d 198, 217 (2002).

¶ 27 B. Best Interest Finding

¶ 28 Respondent also contends the trial court erred in finding it was in D.K.'s best interest to terminate his parental rights. He claims, given his "progress in services and abiding bond with D.K.," the court's best-interest finding was against the manifest weight of the evidence.

¶ 29 After the trial court determines a parent is unfit, it must next determine whether it is in the minor's best interest to terminate parental rights. *In re D. T.*, 212 Ill. 2d 347, 364 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *D.T.*, 212 Ill. 2d at 366. The court's finding will not be disturbed unless it is against the manifest weight of the evidence. *In re T.A.*, 359 Ill. App. 3d 953, 961 (2005). At this

stage, the paramount consideration is the best interest of the minor, not the parent. *T.A.*, 359 Ill. App. 3d at 959.

¶ 30 Here, the record demonstrates D.K. was thriving in his foster home. According to the caseworker, D.K. appeared to have developed a strong bond with his paternal aunt and uncle, his foster parents. He had a structured, safe, and stable environment in the home and reportedly enjoyed living there. He was doing well in school. The foster parents expressed their willingness to be D.K.'s legal guardian, although adoption was not an option at that time.

¶ 31 Conversely, the record demonstrates respondent was unable, at the time or in the near future, to provide the minor with permanency. Respondent's failure to successfully complete his recommended substance-abuse treatment rendered him incapable of carrying out parental duties. Because D.K. was thriving in his foster-care environment and respondent could not provide permanency to him in the foreseeable future, we conclude the court's decision to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 32 III. CONCLUSION

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

¶ 34 Affirmed.