2016 IL App (4th) 151011-U

NOS. 4-15-1011, 4-15-1012 cons.

FILED
April 25, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

| | | |
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| In re: W.O., a Minor, | ) | Appeal from |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | Circuit Court of |
| Petitioner-Appellee, | ) | Douglas County |
| v. (case No. 4-15-1011) | ) | No. 12JA1 |
| TIMOTHY ODOM, | ) | |
| Respondent-Appellant. | ) | |
| _____ | ) | |
| In re: D.O., a Minor, | ) | No. 12JA2 |
| THE PEOPLE OF THE STATE OF ILLINOIS, | ) | |
| Petitioner-Appellee, | ) | |
| v. (case No. 4-15-1012) | ) | Honorable |
| TIMOTHY ODOM, | ) | William Hugh Finson, |
| Respondent-Appellant. | ) | Judge Presiding. |

JUSTICE STEIGMANN delivered the judgment of the court.
Justices Holder White and Pope concurred in the judgment.

**ORDER**

¶ 1 *Held*: The appellate court affirmed the trial court's judgment, which terminated respondent's parental rights.

¶ 2 In November 2014, the State filed separate petitions to terminate the parental rights of respondent, Timothy Odom, as to his children, W.O. (born February 15, 2009) (Douglas County case No. 12-JA-1) and D.O. (born June 1, 2010) (Douglas County case No. 12-JA-2). Following an October 2015 fitness hearing, the trial court found respondent unfit. Following a December 2015 best-interest hearing, the court terminated respondent's parental rights.

¶ 3 Respondent appeals, arguing only that because the trial court's fitness finding was against the manifest weight of the evidence, that finding—and by extension, the court's best-

interest finding—should be reversed. We disagree and affirm.

¶ 4 I. BACKGROUND

¶ 5 A. The Events Preceding the State's Motion To Terminate Parental Rights

¶ 6 On May 2, 2012, the biological mother of W.O and D.O. reported to the police that after W.O. and D.O. visited her home, she noticed bruises, welts, and scratches on W.O. caused by what she characterized as "severe discipline." That day, the biological mother told a Department of Children and Family Services (DCFS) caseworker that she suspected respondent inflicted the injuries as the children's custodial parent. The next day, DCFS took W.O. and D.O. into protective custody. (The biological mother of W.O. and D.O. is not a party to this appeal.)

¶ 7 On May 7, 2012, the State filed separate petitions for adjudication of wardship, alleging that W.O. and D.O. were neglected minors under section 2-3(1)(b) of the Juvenile Court Act of 1987 (Juvenile Court Act) in that their environment was injurious to their welfare (705 ILCS 405/2-3(1)(b) (West 2012)). At a shelter-care hearing conducted that day, the trial court (1) found that an immediate and urgent necessity required the placement of W.O. and D.O. into shelter care and (2) granted DCFS temporary custody of W.O. and D.O.

¶ 8 Following a March 14, 2013, adjudicatory hearing, the trial court found that W.O. and D.O. were neglected minors based on respondent's stipulation that he had placed his children in an environment injurious to their welfare. Following an April 2013 dispositional hearing, the court made W.O. and D.O. wards of the court and maintained DCFS as their guardian.

¶ 9 B. The State's Petition To Terminate Respondent's Parental Rights

¶ 10 In November 2014, the State filed separate petitions to terminate respondent's parental rights, alleging that respondent was unfit within the meaning of section 1(D) of the Adoption Act in that he failed (1) to maintain a reasonable degree of interest, concern, or responsibil-

ity as to the children's welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) to protect the children from conditions within his environment injurious to the children's welfare (750 ILCS 50/1(D)(g) (West 2014)); (3) to make reasonable efforts to correct the conditions that were the basis for the children's removal during any nine-month period following the adjudication of neglect (March 14, 2013) (750 ILCS 50/1(D)(m)(i) (West 2014)); and (4) to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect (March 14, 2013) (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 11 1. *The October 2015 Fitness Hearing*

¶ 12 a. The State's Evidence

¶ 13 During respondent's fitness hearing, the parties agreed to the admission of a December 2013 psychological evaluation report authored by William Kohen, a licensed clinical psychologist. In November 2013, Kohen performed a psychological evaluation of respondent in which Kohen made the following diagnoses and recommendations.

¶ 14 After administering a series of psychological tests, Kohen diagnosed respondent with (1) adjustment disorder with anxiety; (2) learning disorder, not otherwise specified; (3) cannabis abuse, early full remission; and (4) personality disorder not otherwise specified with paranoid (suspicious) features.

¶ 15 Based on his evaluation, Kohen recommended that respondent (1) attend regularly scheduled individual counseling sessions with a focus on "using better judgment and other issues such as [respondent's] apparent paranoid thinking" and "domestic violence"; (2) participate in periodic medical evaluations to "determine the continuing need for psychotropic medication"; (3) attend scheduled supervised visitation with W.O. and D.O. and demonstrate consistent, effective parenting; and (4) maintain an income and suitable housing.

¶ 16 Charli Adams, formerly employed by DCFS contractor One Hope United (Hope), testified that from March 2013 to January 2014, she was the caseworker for W.O. and D.O. Adams' duties included monitoring respondent's progress on completing the following client-service-plan goals: (1) complete a mental-health assessment and comply with any recommended treatment, (2) complete parenting classes, (3) demonstrate parenting skills during scheduled visitations with W.O. and D.O., and (4) maintain suitable housing.

¶ 17 In May 2013, Adams met with respondent to discuss his progress in completing his goals. During that meeting, respondent would not provide the address where he claimed to be residing with friends, which prevented Adams from determining whether respondent's living arrangements were suitable to return W.O. and D.O. to his care. On several occasions, Adams observed respondent provide meals and snacks during his weekly supervised visits with W.O. and D.O. However, respondent required continual assistance redirecting the children and interacting with both of them. Adams noted that respondent did not make any progress with regard to his mental-health goal. Despite respondent's successful completion of his parenting classes, Adams rated his progress as unsatisfactory in (1) maintaining suitable housing, (2) demonstrating parenting skills, and (3) completing a mental-health assessment.

¶ 18 In November 2013, Adams again met with respondent to discuss his progress in completing his client-service-plan goals. During that meeting, respondent reported that he was residing on a farm outside of Champaign, Illinois, but he refused to allow Adams into the residence because he was "working on making it a safe home for the children." As a result, Adams was not able to conduct a residential evaluation to determine suitability. In June 2013, respondent completed a mental-health assessment but did not comply with the treatment recommendations. Adams observed that during the early stages of respondent's supervised visits with W.O.

and D.O., he would appropriately greet them, but as the hourly visit progressed, respondent required assistance in engaging and redirecting the children. Adams noted that W.O. and D.O. tended to seek out the Hope staff member monitoring the particular visit to address any concerns.

¶ 19 Adams acknowledged that respondent (1) would answer questions posed regarding his progress on satisfying his housing goal, but he would not schedule a time for Adams to evaluate his living arrangements; (2) attempted to implement parenting techniques but engaged W.O. and D.O. at "an age level higher than what they were"; and (3) completed three mental-health assessments during her tenure as caseworker but did not accomplish the recommended treatment goals. The first mental-health assessment lapsed because of inaction to start treatment. A second assessment did not recommend treatment because respondent's demeanor suggested an unwillingness to comply. Adams recalled that respondent requested a third mental-health assessment, which he completed, but respondent did not comply with the recommended treatment.

¶ 20 Adams agreed with respondent's attorney that respondent had a "rugged *** pull yourself up by your bootstrap type of parenting style," which Adams believed was not always appropriate given the children's ages. Adams opined that "being overly direct and overly hostile can be damaging for the child." Adams admitted that she had not provided respondent any housing information because respondent was either residing with friends or explaining his future plans for suitable housing.

¶ 21 Adams summarized that from March 2013 to January 2014, respondent's lack of suitable housing was not the sole issue that prevented the return of W.O. and D.O. to his care. Adams agreed that "there were times where [respondent] had to be prompted to interact" with W.O. and D.O. Adams added that during her observations of respondent's visitations with W.O. and D.O., she either had to redirect respondent to (1) interact with both children or (2) include

W.O. in the activity respondent was performing with D.O.

¶ 22 At the request of the guardian *ad litem* and over respondent's objection, the trial court took judicial notice of Douglas County case No. 12-CF-44, in which respondent pleaded guilty to the misdemeanor battery of W.O.

¶ 23 b. Respondent's Evidence

¶ 24 Respondent testified that he lived alone in a single-bedroom efficiency apartment in Champaign. Respondent admitted that after January 2013, he used corporal punishment on rare occasions to discipline W.O. and D.O. Between March 2013 and January 2014, respondent experienced consistent cancellations of his weekly visitations with W.O. and D.O. Although the cancellations were rescheduled and had taken place, respondent noted that the disruptions made parenting difficult because he would have to "bring [W.O. and D.O.] back around to understanding the situation." During visitations periods, respondent would either observe W.O. and D.O. interact or play separately before engaging them. Respondent stated that it made sense to him that as the younger child, D.O. deserved more attention than W.O.

¶ 25 Initially, respondent lived with friends, but he confirmed that the residence was not suitable for W.O. and D.O. In September 2013, respondent moved into a residence that he was renovating with the intent of eventually reacquiring custody of W.O. and D.O. However, respondent discovered that the owner who lived across the road suffered from dementia and could become violent. Respondent acknowledged that he did not permit Adams to inspect the dwelling because "if it's not a feasible option, it's a waste of her time and a waste of mine." Thereafter, respondent continued to look for suitable housing but complained that he did not receive assistance from DCFS regarding possible housing options or resources.

¶ 26 Respondent stated that the safety of W.O. and D.O. was his primary concern. To

this end, respondent voluntarily enrolled in and successfully completed the following courses: (1) children's first class; (2) a parent-orientation class entitled "putting my family back together"; and (3) the Center for Youth and Family Solutions nurturing-parenting program. Respondent stated that these additional classes made him a better parent in that he would use "time-outs" to discipline W.O. and D.O. instead of corporal punishment. During a visit to a local fast-food restaurant, where W.O. and D.O. attempted to play in the bathroom, respondent described the following discipline he attempted to administer:

> "[I] tried to sit down and discuss it with [W.O. and D.O.] and tried to implement some kind of a time-out, but [I] wasn't getting *** support from the ones doing the supervision. So *** if [W.O. and D.O.] are allowed to run amuck, they are going to run amuck. If you don't get support or *** back-up from an agency, then [W.O. and D.O.] are just going to do whatever they want to do."

Respondent believed that the Hope employee supervising the aforementioned visitation should have been "guiding him through the process" of disciplining W.O. and D.O.

¶ 27 Respondent (1) denied the allegations of neglect that caused W.O. and D.O. to become wards of the court, (2) did not know the birthdates of W.O. and D.O., (3) could not recall his assigned client-service-plan goals, and (4) felt as if Hope staff were determined to make sure that W.O. and D.O. would not be returned to his care regardless of his progress.

¶ 28 c. The Trial Court's Ruling

¶ 29 The trial court found Adams' testimony credible and respondent's testimony "not credible at all." Specifically, the court determined that during the nine-month period beginning on March 14, 2013, respondent failed to (1) acquire suitable housing, (2) comply with mental-

health-treatment recommendations, and (3) demonstrate adequate parenting skills.

¶ 30 Thereafter, the trial court found respondent was unfit within the meaning of section 1(D) of the Adoption Act in that he failed to make reasonable (1) efforts to correct the conditions that were the basis for the children's removal during any nine-month period following the adjudication of neglect and (2) progress toward the return of the children during any nine-month period following the adjudication of neglect. (The court did not comment on the State's remaining allegations that respondent was unfit in that he failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to his children's welfare; and (2) protect the children from conditions within his environment injurious to the children's welfare.)

¶ 31 2. *The December 2015 Best-Interest Hearing*

¶ 32 Following a December 2015 best-interest hearing, the trial court found that the State had shown, by a preponderance of the evidence, that it was in the best interest of W.O. and D.O. to terminate respondent's parental rights. The court based its ruling, in pertinent part, on testimony provided by one of the foster parents of W.O. and D.O. that since 2012, they had been providing W.O. and D.O. a loving home environment in which their mental, emotional, developmental, medical, and financial needs were being satisfied.

¶ 33 This appeal followed.

¶ 34 II. THE TRIAL COURT'S FITNESS DETERMINATION

¶ 35 A. The Applicable Statute, Reasonable Progress, and the Standard of Review

¶ 36 Section 1(D)(m)(ii) of the Adoption Act provides, in pertinent part, as follows:

> "D. 'Unfit person' means any person whom the court shall find to be unfit to have a child, without regard to the likelihood that the child will be placed for adoption. The grounds of unfitness are

> any one or more of the following, except that a person shall not be considered an unfit person for the sole reason that the person has relinquished a child in accordance with the Abandoned Newborn Infant Protection Act:
>
> * * *
>
> (m) Failure by a parent *** (ii) to make reasonable progress toward the return of the child to the parent during any 9-month period following the adjudication of neglected or abused minor under [s]ection 2-3 of the [Juvenile Court Act]." 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 37 In *In re C.N.*, 196 Ill. 2d 181, 216-17, 752 N.E.2d 1030, 1050 (2001), the supreme court discussed the following benchmark for measuring "reasonable progress" under section 1(D)(m) of the Adoption Act:

> "[T]he benchmark for measuring a parent's 'progress toward the return of the child' under section 1(D)(m) of the Adoption Act 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."

¶ 38 "[R]easonable progress is judged by an objective standard based upon the amount of progress measured from the conditions existing at the time custody was taken from the par-

ent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067, 859 N.E.2d 123, 137 (2006). "Reasonable progress exists when the trial court can conclude that it will be able to order the child returned to parental custody in the near future." *Id.*

¶ 39 "The State must prove parental unfitness by clear and convincing evidence, and the trial court's findings must be given great deference because of its superior opportunity to observe the witnesses and evaluate their credibility." *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067, 808 N.E.2d 596, 604 (2004).

¶ 40 B. Respondent's Fitness Claim

¶ 41 Respondent argues that the trial court's fitness finding was against the manifest weight of the evidence. We disagree.

¶ 42 In this case, the trial court found respondent unfit on two separate grounds, which included that he failed to make reasonable progress toward the return of W.O. and D.O. during the nine-month period from March 14, 2013, to December 14, 2013. We conclude that the court's finding on that specific ground was supported by clear and convincing evidence.

¶ 43 The evidence presented by the State, as provided by Adams' testimony—which the trial court found credible—showed that during the nine-month period at issue, respondent did not make any measurable progress toward successfully completing three of four assigned client-service-plan goals. Specifically, respondent did not obtain suitable housing, comply with his mental-health-treatment recommendations following at least two of three mental-health assessments, and he could not adequately demonstrate parenting techniques that would substantiate returning W.O. and D.O. to his care. Indeed, Adams (1) detailed respondent's evasion when she attempted to determine the suitability of respondent's living arrangements, (2) chronicled respondent's failure and reluctance to comply with mental-health-treatment recommendations fol-

lowing three different mental-health assessments, and (3) noted respondent's inability to consistently demonstrate parenting techniques by appropriately redirecting or interacting with W.O. and D.O.

¶ 44 In finding that respondent was unfit within the meaning of section 1(D) of the Adoption Act in that respondent failed to make reasonable progress toward the return of the children during any nine-month period following the adjudication of neglect, the trial court noted that "the basic problem is [in respondent's] world view, nothing is his responsibility." Based on Adams' testimony that respondent failed to make reasonable, consistent progress toward successfully completing his goals—in the near future—we conclude that the evidence presented supported the court's finding of unfitness by clear and convincing evidence.

¶ 45 Having so concluded, we need not consider the trial court's other findings of parental fitness against respondent. See *In re Brandon A.*, 395 Ill. App. 3d 224, 241, 916 N.E.2d 890, 904 (2009) (evidence sufficient to satisfy any one statutory ground regarding parental fitness obviates the need to review the propriety of other statutory grounds).

¶ 46 III. CONCLUSION

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

¶ 48 Affirmed.