2016 IL App (4th) 160082-U

NO. 4-16-0082

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

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: J.U., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 14JA49
CANDACE SMITH,	)	
Respondent-Appellant.	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE APPLETON delivered the judgment of the court.
Justices Harris and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The trial court did not make findings that were against the manifest weight of the evidence when finding respondent to be an "unfit person" within the meaning of section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)) and when finding it would be in the best interest of the minor to terminate her parental rights.

¶ 2 In this case, the trial court granted the State's petition to terminate the parental rights of respondent, Candace Smith, to her son, J.U., born October 2, 2010. Respondent appeals. Specifically, she challenges the court's factual findings that she was an "unfit person" and that it was in the child's best interest to terminate her parental rights. Because we are unable to say those findings are against the manifest weight of the evidence, we affirm the trial court's judgment.

¶ 3 I. BACKGROUND

¶ 4 In April 2014, police found Jason U., the minor's father, passed out in his vehicle at a stoplight with J.U. in the back seat. Jason admitted using heroin shortly before he was found. J.U. was placed with his paternal grandmother, as respondent was in jail at the time. The State filed a petition for adjudication of neglect, alleging J.U. was a neglected minor because his environment was injurious to his welfare "as evidenced by drug use of the minor's father." See 705 ILCS 405/2-3(1)(b) (West 2012). However, Jason is not a party to this appeal.

¶ 5 In September 2014, the State filed a supplemental petition, alleging the minor was neglected due to respondent's drug use. On September 4, 2014, the trial court conducted an adjudicatory hearing. Respondent admitted the allegation in the petition—that J.U. was neglected due to her drug use. Upon respondent's stipulation, the State agreed to dismiss the supplemental petition. The court entered an adjudicatory order, and on October 29, 2014, the court entered a dispositional order, finding respondent unfit and making the minor a ward of the court.

¶ 6 According to respondent's initial case plan, covering the dates from May 2014 to November 2014, she was to participate in the following services: (1) domestic-violence counseling; (2) individual counseling; (3) an alcohol and drug assessment, and any recommended treatment; and (4) a parenting course. These services were recommended due to her reported history of domestic violence and drug abuse.

¶ 7 Respondent's next case plan, covering the dates from October 2014 to April 2015, indicated she had "made minimal progress in regards to completing the goals recommended in the service plan." Although, in March 2015, respondent successfully completed her parenting course, she had not sufficiently progressed with regard to her remaining tasks. In August 2014, respondent had been referred to Lutheran Child and Family Services (LCFS) for domestic-

violence counseling. She reportedly stopped attending those counseling sessions in January 2015. She had completed her substance-abuse assessment in July 2014, and, as a result, she was referred to The Family Guidance Center for further evaluation and treatment. There, she completed an initial intake evaluation in August 2014. Respondent was accepted into the methadone treatment program and was scheduled to meet with her counselor once a month. Although she was participating in treatment, respondent continued to test positive for cocaine, opiates, and methadone.

¶ 8 On September 23, 2015, the State filed a motion to terminate respondent's parental rights, alleging she failed to (1) maintain a reasonable degree of interest, concern, or responsibility toward the minor (750 ILCS 50/1(D)(b) (West 2014)); (2) 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 (3) make reasonable progress toward the return of the minor within nine months after adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 9 Also on September 23, 2015, the trial court entered an "order on first appearance," which indicated the court had admonished respondent regarding its authority to conduct the trial in her absence. The termination hearing was scheduled for December 17, 2015. On that date, respondent appeared. However, the State moved to continue the hearing because the proper writ, allowing the father to attend from the Illinois Department of Corrections (DOC), had not been filed. The matter was reset for January 4, 2016. On that date, respondent failed to appear. The matter was again reset for January 7, 2016.

¶ 10 On January 7, 2016, the trial court conducted the termination hearing. Jason appeared and voluntarily surrendered his parental rights. Respondent failed to appear. Respondent's counsel moved to continue the hearing. However, the court denied the motion

after the caseworker informed the court he had spoken with respondent sometime on or after January 4, 2016, and advised her of the current hearing date and time. According to the caseworker, respondent had acknowledged the information and indicated she would appear.

¶ 11 At the hearing, the State presented the testimony of Amber Nicole Williamson, the assigned caseworker between May 2014 and January 2015. Williamson identified the tasks set forth above as those recommended for respondent in the initial case plan. Williamson also said respondent was required to communicate and cooperate with LCFS, the agency contracted with the Department of Children and Family Services to assist the family. In November 2014, when the initial case plan was reviewed, respondent was described as "somewhat cooperative." However, her progress was rated "unsatisfactory" because all of her tasks had not been completed and she continued to test positive for drugs.

¶ 12 Williamson testified, in August 2014, respondent began a methadone treatment program. Although respondent cooperated with the random drug drops, she tested positive for opiates in July 2014 and cocaine in August 2014, before she began the treatment program. After she began the program, she tested positive for cocaine, opiates, and methadone twice in August 2014 and once in September. In November 2014, she tested positive twice for methadone.

¶ 13 Williamson further testified respondent was rated uncooperative with regard to her parenting course. She had been referred to the course in May 2014, but she was unsuccessfully discharged in June 2014 due to a lack of attendance. She was referred again in September 2014. Because the agency had difficulty contacting her, she did not begin until January 2015. Respondent was also rated unsatisfactory with regard to her individual counseling and domestic-violence counseling tasks, as they were deferred while she participated in the

methadone treatment program. Williamson said, overall, respondent was rated unsatisfactory on her initial case plan.

¶ 14 The next case plan covered October 2014 through April 2015 and included the same services. Williamson testified her last contact with respondent was on January 29, 2015, when respondent admitted she had relapsed in December 2014 and January 2015. Respondent failed to appear for two scheduled drug drops in December 2014. Sometime in August 2014, respondent lost her housing. She reportedly "jumped around" to various friends' homes.

¶ 15 Williamson said respondent had supervised visits with the minor for two hours per week. With 33 visits available while Williamson was the caseworker, respondent attended 27. Williamson said the agency was never close to returning the minor to respondent's care because she had not "corrected the conditions which led to the child being taken into care."

¶ 16 Next, the State called Alicia Hetzer, the caseworker who succeeded Williamson and worked with the family from February 2015 to October 2015. In March 2015, respondent tested positive twice for cocaine, opiates, and methadone. Although, she successfully completed her parenting course on March 3, 2015, she last attended domestic-violence and individual counseling in January 2015. Overall, respondent was rated unsatisfactory.

¶ 17 Hetzer testified she discussed with respondent the services set forth in the new case plan, which covered the dates of April 2015 to October 2015. In October 2015, when the plan was reviewed, respondent was rated unsatisfactory. She missed one drug drop in July 2015, two in August 2015, and one on September 4, 2015. On September 1, 2015, respondent tested positive for cocaine and methadone. Respondent's parenting task was the only task rated satisfactory. There were 40 documented available visits for respondent; she attended 32. Hetzer said she was generally able to maintain regular contact with respondent. Like Williamson,

Hetzer testified there was never a time when the agency was close to returning the minor to respondent's care because she "was not actively engaged in her services" and her substance abuse continued. The State rested.

¶ 18 Respondent's counsel renewed his motion to continue, but the trial court again denied the request. The parties presented no further evidence and waived argument. After considering the evidence and taking judicial notice of the adjudication and disposition of neglect, the court found as follows:

> "Based upon the evidence, I do believe that the State has [proved] by clear and convincing evidence each of the allegations in paragraph 8, that the mother, Candace Smith, is an unfit person to have this child[.]
>
> * * *
>
> Drugs have been the major problem for her throughout, and she has never [been] able to successfully overcome that issue, continuing to test positive throughout the life of this case, was able to go through things like parenting, but again, never was able to get over that one main hurdle of the substance abuse, which would then affect everything else.
>
> It certainly affected the ability of the caseworkers to ever come close to placing the child back with her. She was never able to move past supervised visits.
>
> So I do believe the State has proved that by clear and convincing evidence."

¶ 19 The trial court proceeded immediately to the best-interest hearing, over respondent's counsel's objection due to respondent's absence. Counsel moved to continue the

hearing, but the court denied the motion. The State called Ryan Watkins, the current caseworker, who testified regarding the sufficiency of the minor's placement. Watkins said J.U. had been placed with his paternal grandmother, LouAnn Adcock, since the beginning of the case in April 2014. He was diagnosed with autism but was "making excellent progress." Adcock fully attends to J.U.'s educational, social, and medical needs. According to Watkins, Adcock takes care of everything the minor requires. Also living with Adcock was her 16-year-old daughter, Angela. J.U. and Angela each have their own room. Adcock had expressed her willingness to adopt J.U. to provide him with permanency. They have a strong and loving bond, as J.U. calls Adcock "Momma."

¶ 20 Watkins testified that, although J.U. and respondent have a "strong attachment," there would be no harm to J.U., in his opinion, if respondent's parental rights were terminated. On cross-examination, Watkins admitted no one had considered the possibility of maintaining respondent's parental rights while allowing Adcock to have guardianship of J.U. No further evidence was presented.

¶ 21 After considering the evidence and arguments of counsel, the trial court found it was in J.U.'s best interest to terminate respondent's parental rights. The court noted the primary concern was J.U.'s permanency and stability, particularly given his diagnosis of autism.

¶ 22 This appeal followed.

¶ 23 II. ANALYSIS

¶ 24 A. Unfitness Finding

¶ 25 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 and to 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).

¶ 26 In the present case, the father surrendered his parental rights to J.U., but respondent did not surrender her parental rights. Therefore, the first prerequisite to the termination of her parental rights was a finding, by clear and convincing evidence, that she was an "unfit person" within the meaning of any section of the Adoption Act the State invoked in its petitions (750 ILCS 50/1(D)(b), (D)(m)(i), (D)(m)(ii) (West 2014)).

¶ 27 The trial court found it had been proved, by clear and convincing evidence, that respondent conformed to all three of the cited definitions of an "unfit person," i.e., she had "[f]ail[ed] to maintain a reasonable degree of interest, concern or responsibility as to the child's welfare" (750 ILCS 50/1(D)(b) (West 2014)); she had "[f]ail[ed] *** 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 [neglect]" (750 ILCS 50/1(D)(m)(i) (West 2014)); and she had "[f]ail[ed] *** to make reasonable progress toward the return of the child to [herself] during any 9-month period following the adjudication of [neglect]," specifically, during the period of September 4, 2014, to June 4, 2015 (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 28 If respondent conformed to only one of these statutory definitions, she was an "unfit person." See *In re F.P.*, 2014 IL App (4th) 140360, ¶ 83. It is not our place to decide whether she is an "unfit person." Instead, our place is to decide whether the trial court made a

finding that was against the manifest weight of the evidence when it found her to be an "unfit person" within the meaning of sections 1(D)(b), (D)(m)(i), or (D)(m)(ii), the sections the State invoked in its petition to terminate parental rights. 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 respondent's conformance to the statutory definition in question was unproved. *C.N.*, 196 Ill. 2d at 208. 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).

¶ 29 With that deferential standard of review in mind (see *In re Diamond M.*, 2011 IL App (1st) 111184, ¶ 31), we will compare the evidence in the fitness-person hearing to one of the three cited statutory definitions, that in section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)).

¶ 30 Section 1(D)(m)(ii) provides 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 ***:
>
> * * *
>
> (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[.]" 750 ILCS 50/1(D)(m)(ii) (West 2014).

¶ 31 In *C.N.*, 196 Ill. 2d at 216-17, 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."

¶ 32 "[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 parent." *In re Daphnie E.*, 368 Ill. App. 3d 1052, 1067 (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." *Daphnie E.*, 368 Ill. App. 3d at 1067.

¶ 33 In this case, the relevant nine-month time period was September 4, 2014, to June 4, 2015. Although respondent did well with visits and successfully completed her parenting course in March 2015, she did not make measurable progress with regard to the majority of her tasks. Specifically, the evidence demonstrated that, during this nine-month period, respondent repeatedly tested positive for cocaine, opiates, and/or methadone despite her participation in a methadone treatment program, which she began in August 2014. According to the testimony of the caseworkers, respondent tested positive for drugs in September, November, and December 2014, as well as in January and March 2015. Clearly, respondent struggled with substance abuse. However, she was no closer to overcoming her substance-abuse issue by the end of this nine-month period. Further, the evidence suggested respondent had stopped attending her individual and domestic-violence counseling sessions in January 2015.

¶ 34 Based on the evidence presented at the fitness hearing, it is clear respondent failed to make reasonable, consistent progress toward successfully completing her goals. The caseworkers testified the agency never considered returning J.U. to respondent's care because she had not made measurable progress in her services, as her substance abuse continued. Given this testimony, as well as the other evidence presented, we conclude the court's finding of unfitness was proved by clear and convincing evidence.

¶ 35 B. Best-Interest Hearing

¶ 36 Just because a parent is an "unfit person," whose parental rights, for that reason, could be terminated, it does not necessarily follow that his or her parental rights should be terminated. See *D.T.*, 212 Ill. 2d at 364. That is, the question in the best-interest hearing is whether the parent's parental rights should be terminated. *D.T.*, 212 Ill. 2d at 364. The answer to that question depends solely on whether it would be in the child's best interest to terminate that parent's parental rights—a proposition that has to be proved by a preponderance of the evidence. *In re O.S.*, 364 Ill. App. 3d 628, 633 (2006). As the trial court correctly observed, no one else's interest counts in the best-interest hearing. The court is, at that point, concerned only with the child's best interest. *In re Jay. H.*, 395 Ill. App. 3d 1063, 1071 (2009) ("After a finding of parental unfitness, the trial court must give full and serious consideration to the child's best interest."). "[A]t a best-interests hearing, the 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.

¶ 37 The legislature has said that "[w]henever a 'best interest' determination is required, the following factors shall be considered in the context of the child's age and developmental needs:

(a) the physical safety and welfare of the child, including food, shelter, health, and clothing;

(b) the development of the child's identity;

(c) the child's background and ties, including familial, cultural, and religious;

(d) the child's sense of attachments, including:

(i) where the child actually feels love, attachment, and a sense of being valued (as opposed to where adults believe the child should feel such love, attachment, and a sense of being valued);

(ii) the child's sense of security;

(iii) the child's sense of familiarity;

(iv) continuity of affection for the child;

(v) the least disruptive placement alternative for the child;

(e) the child's wishes and long-term goals;

(f) the child's community ties, including church, school, and friends;

(g) 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;

(h) the uniqueness of every family and child;

(i) the risks attendant to entering and being in substitute care; and

(j) the preferences of the persons available to care for the child." 705 ILCS 405/1-3(4.05) (West 2014).

¶ 38 It is important to understand that we do not apply these factors *de novo* any more than we decide *de novo* whether respondent is an "unfit person." The same deferential standard of review governs our analysis: we decide whether the trial court made a finding that was "contrary to the manifest weight of the evidence" when it found that terminating respondent's parental rights would be in J.U.'s best interest. *In re R.L.*, 352 Ill. App. 3d 985, 1001 (2004). In other words, we will defer to the trial court on the question of the child's best interest unless it is "clearly evident" from the record of the best-interest hearing—not merely arguable but "clearly evident"—that the State actually failed to prove it would be in the child's best interest to terminate respondent's parental rights. *In re Arthur H.*, 212 Ill. 2d 441, 464 (2004).

¶ 39 We are unconvinced it is "clearly evident" that the State failed to carry its burden of proof in the best-interest hearing. For the preceding two years, J.U. had been residing with his paternal grandmother, who has provided for his "physical safety and welfare" (705 ILCS 405/13(4.05)(a) (West 2014)), has made him feel loved and valued (see 705 ILCS 405/1-3(4.05)(d)(i) (West 2014)), and wants to give him "permanence" by adopting him (705 ILCS 405/1-3(4.05)(g) (West 2014)). With respondent, on the other hand, the minor would have impermanence, a lack of security, and would likely be exposed to her struggle with substance abuse. As the trial court said, it "will not let this child just sort of linger. He needs to have that option of having stability, knowing that this one person is going to be taking car[e] of him, not that well, maybe mom will come back, maybe she won't, maybe she will get her act together, if not, how long will it be?"

¶ 40 Respondent's idea is that J.U. would remain with Adcock under a guardianship without terminating her parental rights. This arrangement would conceivably afford respondent the time and opportunity to overcome her substance-abuse issues and regain custody of J.U. For

this proposition, she relies on the reported bond between her and J.U. to which Walker testified. However, the evidence presented at the hearing and consideration of the statutory factor, indicated termination was in the minor's best interest. Trying to maintain the "strong attachment" between respondent and the minor would be like exchanging a presently existing good thing for impermanence and uncertainty. J.U. especially needs stability as he struggles with autism. Under respondent's plan, J.U. would remain in limbo—no one knows when, if ever, he could return to respondent's care. This plan might be in respondent's best interest, but it would not be in J.U.'s best interest.

¶ 41 J.U. is loved and well cared for in Adcock's home. She provides for all of his needs, which are greater than normal due to his diagnosis of autism. Given the evidence presented, we are unable to say the trial court made a finding that was against the manifest weight of the evidence when finding it would be in the minor's best interest to terminate respondent's parental rights and thereby to make way for his adoption by his paternal grandmother, to whom the child is attached and with whom he is, by all appearances, happy and content.

¶ 42 C. Motion To Continue

¶ 43 Finally, respondent contends the trial court erred in denying her counsel's motions to continue both phases of the termination hearing. She contends that, in the interest of fairness, the court should have granted counsel's motion because the court had granted the State's motion to continue at an earlier hearing to secure the father's presence at trial. She notes she had not previously requested a continuance in this matter. However, she does not go as far to argue her due-process rights were violated when the court conducted the fitness and best-interest hearings in her absence.

¶ 44 Indeed, a parent has the right to be present at the termination hearing, but her presence is not mandatory. *In re M.R.*, 316 Ill. App. 3d 399, 402 (2000). Likewise, respondent does not have an absolute right to a continuance. *In re S.W.*, 2015 IL App (3d) 140981, ¶ 32. "The court is not required to wait until the parent chooses to appear." *S.W.*, 2015 IL App (3d) 140981, ¶ 35. In juvenile cases, "[t]he court may continue the hearing 'only if the continuance is consistent with the health, safety and best interests of the minor.' " *In re K.O.*, 336 Ill. App. 3d 98, 104 (2002) (quoting 705 ILCS 405/2-14(c) (West 2000)). The trial court has discretion to determine whether or not to grant a continuance. *In re A.F.*, 2012 IL App (2d) 111079, ¶ 36. We will not reverse that decision "absent manifest abuse or palpable injustice." *S.W.*, 2015 IL App (3d) 140981, ¶ 32.

¶ 45 We find the trial court did not abuse its discretion in denying respondent's motions to continue. First, the record indicates respondent was advised the termination hearing could be conducted in her absence. The court entered an order on September 23, 2015, which indicated "[m]other admonished of trial in her absence." According to this order, the "trial" was scheduled for December 17, 2015. Respondent appeared on that date; however, the State moved to continue the hearing because it had failed to issue the appropriate writ to bring the father to the hearing from DOC. The docket entry from December 17, 2015, indicated: "State to writ father. Cause continued to [January 4, 2016,] at 1:30 p.m." The docket entry did not specifically state that the fitness hearing would be conducted on January 4, 2016, but it would be reasonable to assume such, being the "cause" was continued. Respondent did not appear on January 4, 2016. The docket entry for January 4, 2016, indicated: "Cause continued to [January 7, 2016,] at 1:30 p.m. to writ father from DOC." Respondent also did not appear on January 7, 2016. She does not assert a lack of notice.

¶ 46 Second, respondent failed to argue the trial court's denials of her motions to continue prejudiced her. She was represented by counsel at the fitness and best-interest hearings. Counsel conducted cross-examination of witnesses and presented valid arguments on her behalf. The denial of a request for a continuance is not grounds for reversal unless such denial prejudiced the complaining party. *A.F.*, 2012 IL App (2d) 111079, ¶ 36. No evidence suggests respondent suffered prejudice. As such, respondent has failed to demonstrate an abuse of discretion resulting from the denial of her continuance motions.

¶ 47 III. CONCLUSION

¶ 48 For the reasons stated, we affirm the trial court's judgment terminating respondent's parental rights.

¶ 49 Affirmed.