2016 IL App (4th) 160118-U

NO. 4-16-0118

FILED
June 10, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: A.P., a Minor,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Sangamon County
v.	)	No. 13JA81
EVERLENE PHILLIPS,	)	
Respondent-Appellant.	)	Honorable
	)	Karen S. Tharp,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Justices Holder White and Steigmann concurred in the judgment.

ORDER

¶ 1 *Held*: The circuit court's findings (1) respondent was unfit under section 1(D)(m)(ii) of the Adoption Act and (2) it was in the minor child's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 In April 2015, the State filed a motion for the termination of the parental rights of respondent, Everlene Phillips, as to her minor child, A.P. (born in 2010). The State later filed a supplement to its termination motion. After a January 2016 hearing, the Sangamon County circuit court found respondent unfit. At the best-interest hearing, the court concluded it was in A.P.'s best interest to terminate respondent's parental rights.

¶ 3 Respondent appeals, asserting the circuit court erred by finding (1) her unfit and (2) it was in A.P.'s best interest to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In June 2013, the State filed a petition for the adjudication of wardship of A.P., which alleged she was neglected pursuant to (1) section 2-3(1)(a) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-3(1)(a) (West 2012)), in that she was not receiving the proper care and supervision necessary for her well-being because respondent failed to make a proper care plan for her and (2) section 2-3(1)(b) of the Juvenile Court Act (705 ILCS 405/2-3(1)(b) (West 2012)), in that her environment was injurious to her welfare because of respondent's drug and alcohol use.

¶ 6 At the February 5, 2014, adjudicatory hearing, the State amended the wardship petition to remove the allegation of respondent's drug use from the second count of the petition. Respondent stipulated A.P. was neglected under section 2-3(1)(b) of the Juvenile Court Act because A.P.'s environment was injurious to her welfare due to respondent's alcohol use. After a March 2014 dispositional hearing, the court (1) found respondent was unfit, unable, or unwilling to care for, protect, train, educate, supervise, or discipline A.P.; (2) made A.P. a ward of the court; and (3) placed custody and guardianship of A.P. with the Department of Children and Family Services (DCFS).

¶ 7 On April 28, 2015, the State filed a motion to terminate respondent's and the unknown father's parental rights to A.P. The motion asserted respondent was unfit because she failed to (1) maintain a reasonable degree of interest, concern, or responsibility as to A.P.'s welfare (750 ILCS 50/1(D)(b) (West 2014)); (2) make reasonable efforts to correct the conditions that were the basis for A.P.'s removal (the petition did not state a nine-month period for this allegation) (750 ILCS 50/1(D)(m)(i) (West 2014)); and (3) make reasonable progress toward A.P.'s return during the initial nine-month period after the neglect adjudication, which was February 5, 2014, to November 5, 2014 (750 ILCS 50/1(D)(m)(ii) (West 2014)). In

September 2015, the State filed a supplement to the termination motion, asserting respondent was also unfit because she had an inability to discharge parental responsibilities due to her mental impairment, mental retardation, or developmental disability and sufficient justification existed to believe the inability would extend beyond a reasonable period of time (750 ILCS 50/1(p) (West 2014)).

¶ 8 On January 28, 2016, the circuit court held a fitness hearing. The State presented the testimony of (1) Dr. Helen Appleton, a clinical psychologist; (2) Laura Weston, A.P.'s caseworker from June 2013 to January 2014; and (3) Rebecca Harley-Meyer, A.P.'s caseworker from February 2014 to February 2015. Respondent presented the testimony of Valerie Brown, A.P.'s caseworker since February 2015.

¶ 9 Dr. Appleton testified DCFS referred respondent to her for an evaluation to determine whether respondent had (1) a mental diagnosis and/or (2) a disorder that would limit her parenting. Dr. Appleton was also asked to provide any information that would help with casework planning in this case. Dr. Appleton met with respondent on two different days. She interviewed respondent and gave her numerous tests. Dr. Appleton diagnosed respondent with a mild intellectual disability and found respondent did not have a mental disorder. She also testified she had concerns about respondent's ability to parent. Dr. Appleton noted people with respondent's intellectual level are not able to parent independently and require a lot of support. She had never seen anybody with respondent's level of intellectual functioning successfully parent. It is a lifelong issue for respondent. On March 25, 2014, Dr. Appleton submitted her written report to DCFS, which was admitted into evidence as People's exhibit No. 1.

¶ 10 When asked about what parenting tasks respondent could perform, Dr. Appleton noted respondent could describe healthy meals to her but further stated the visitation records

showed respondent provided A.P. with candy. She would expect respondent to be able to change a diaper, but again she noted the visitation records showed respondent had some difficulties with soiled diapers. Dr. Appleton further testified most people at respondent's intellectual level cannot manage their own funds. Respondent said she was managing her own funds, but the visitation records indicated respondent was frequently out of money for transportation to visitation. Also, Dr. Appleton stated it would be difficult for respondent to recognize whether A.P. was in need of health care, especially emergency care. Respondent did not know how to use a thermometer. However, respondent had kept A.P. up-to-date with her shots. According to Dr. Appleton, respondent would need more and more assistance as A.P. got older. She explained respondent would need help with making judgments on safety issues, such as when A.P. would be able to go outside by herself. Respondent would also need assistance with disciplining A.P. and would be unable to help A.P with homework. However, Dr. Appleton thought respondent could probably make meals and keep a house clean for A.P.

¶ 11 Weston testified the first service plan for A.P. covered June through December 2013. The plan required respondent to (1) complete a substance-abuse assessment and treatment; (2) attend parenting classes; and (3) obtain counseling and/or mental-health services, if necessary; and (4) cooperate with any recommendations related to her housing and employment. Respondent received a satisfactory rating on the first service plan. Respondent completed a substance-abuse assessment in September 2013 and completed recommended outpatient services in November 2013. She also completed a parenting class in November 2013. As to visitation, respondent attended her visits but did not demonstrate appropriate parenting during visits. Respondent had not obtained a psychological evaluation. Overall, respondent had cooperated with the agency but had failed to maintain stable housing.

¶ 12 The second service plan had the same requirements and covered December 2013 to June 2014. Weston was only the caseworker until January 2014. At that point, respondent was still satisfactory as to substance-abuse and parenting classes. She had also scheduled her psychological evaluation. However, respondent had not demonstrated the skills necessary to parent, lacked stable housing, and could not manage her money properly. As to housing, respondent's income was $700 a month, which was insufficient to cover all of her needs while she lived in a hotel. Weston supported respondent living with someone. However, respondent never provided her with enough information for Weston to meet the person or perform a background check on the person. Moreover, Weston testified that, during visits, she could tell respondent loved her daughter, but her expectations for A.P. were unreasonable as respondent tried to have adult conversations with her. If respondent brought food to visits, it was chips or candy. Once or twice she brought a small gift for A.P. Weston was never close to returning A.P. to respondent's care.

¶ 13 Harley-Meyer testified she reviewed the second service plan on June 24, 2014. Respondent still had difficulty demonstrating appropriate parenting skills. Respondent received an unsatisfactory rating for substance abuse because she started using alcohol again and appeared to be under the influence at a March 2014 court date. Respondent lived with her "Aunt Jesse," but they were evicted from the home. Harley-Meyer said A.P. could not be returned to Aunt Jesse's home. Respondent was rated unsatisfactory on her independence goal because respondent had difficulty taking care of herself and meeting her own basic needs. For example, she relied on others to tell her what clothing was appropriate for the weather. Respondent had successfully completed the psychological evaluation.

¶ 14 The third service plan covered June 2014 to December 2014. As to that service

plan, respondent received an unsatisfactory rating on parenting because she still did not demonstrate appropriate parenting skills. She also did not meet A.P.'s basic needs during visits. However, respondent was able to interact with A.P. more as a playmate, which was an improvement. Respondent received a satisfactory rating for substance abuse because she was going to the Family Guidance Center and following all of its recommendations. She also received a satisfactory rating for mental health. However, respondent changed her residence and did not inform her caseworker. She was also not forthcoming about her relationships and had been stabbed in the face. Respondent's home was also not appropriate for A.P.'s return as it did not even meet respondent's needs. Respondent was also still unable to meet her own basic needs and could not meet A.P.'s. Respondent attended visits. For the first six months, she often just watched A.P. Over the last six months of Harley-Meyer being the caseworker, respondent interacted and played with A.P. Respondent brought a couple of things for A.P. at Christmas. Harley-Meyer tried to work with respondent on budgeting, but she refused to discuss monetary issues. She had also worked with respondent to find a person who could assist respondent with parenting. However, two of the people were not appropriate. Harley-Meyer testified she was never close to returning A.P. to respondent because respondent could not even meet her own basic needs.

¶ 15 Brown testified respondent had given her the names of several people who would be willing to live with her and assist her in parenting A.P. Only one person passed the background check, and she was considered "elderly." The person's age was a factor because respondent needed someone to assist her until A.P. reached adulthood. After the background check was complete, Brown left a message for the person, and the person never contacted Brown. Respondent had recently given Brown the name of a person who lived in Arkansas.

Brown was still working on running a background check through the federal system, which takes many steps.

¶ 16 At the conclusion of the hearing, the circuit court found respondent was unfit based on her (1) failure to make reasonable progress toward A.P.'s return during the initial nine months after the neglect adjudication and (2) inability to discharge parental responsibilities due to her mental impairment. On the written order, it also stated respondent was unfit for failing to maintain a reasonable degree of interest, concern, or responsibility as to A.P.'s welfare.

¶ 17 After the fitness hearing, the circuit court proceeded to hold the best-interest hearing. The State presented the testimony of Brown, and respondent testified on her own behalf. Brown testified A.P. was currently five years old and had been in her current foster home since 2013. A.P.'s foster mother loved A.P. and would love to be her mother. A.P. called her foster mother "mom" and was very affectionate toward her. A.P. considered her foster home as her home and wanted to stay there. A.P. saw respondent as a playmate. Brown had never heard A.P. ask when she could go home with respondent. Respondent's visits with A.P. were for an hour twice a month.

¶ 18 Respondent testified she had a strong bond with A.P. and A.P had a strong bond with her. All the time, A.P. asked respondent when she was going to come home. A.P. told her she did not like her foster home. Respondent also testified she had two sons, ages 12 and 13, who lived with relatives in Arkansas. She had not seen the boys since they were 9 and 11 years old.

¶ 19 After hearing the parties' evidence and arguments, the circuit court found it was in A.P.'s best interest to terminate respondent's and her unknown father's parental rights. That same day, the court entered the written termination order. On February 16, 2016, respondent filed a

timely notice of appeal in sufficient compliance with Illinois Supreme Court Rule 303 (eff. Jan. 1, 2015). See Ill. S. Ct. R. 660(b) (eff. Oct. 1, 2001) (providing the rules governing civil cases govern appeals from final judgments in all proceedings under the Juvenile Court Act, except for delinquency cases). Thus, this court has jurisdiction of this appeal pursuant to Illinois Supreme Court Rule 304(b)(1) (eff. Feb. 26, 2010).

¶ 20 II. ANALYSIS

¶ 21 Under section 2-29(2) of the Juvenile Court Act (705 ILCS 405/2-29(2) (West 2014)), 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," as that term is defined in section 1(D) of the Adoption Act (750 ILCS 50/1(D) (West 2014)). *In re Donald A.G.*, 221 Ill. 2d 234, 244, 850 N.E.2d 172, 177 (2006). If the circuit court makes a finding of unfitness, then the State must prove by a preponderance of the evidence it is in the child's best interest that parental rights be terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 22 Since the circuit 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). Further, in matters involving a minor, the circuit court receives broad discretion and great deference. *E.S.*, 324 Ill. App. 3d at 667, 756 N.E.2d at 427. Thus, a reviewing court will not disturb a circuit court's unfitness finding and best-interest determination unless they are contrary to the manifest weight of the evidence. See *In re Gwynne P.*, 215 Ill. 2d 340, 354, 830 N.E.2d 508, 516-17 (2005) (fitness finding); *In re Austin W.*, 214 Ill. 2d 31, 51-52, 823 N.E.2d 572, 585 (2005) (best-interest determination). A circuit court's decision is against the manifest weight of the evidence only where the opposite conclusion is clearly apparent. *Gwynne P.*, 215

Ill. 2d at 354, 830 N.E.2d at 517.

¶ 23 A. Respondent's Fitness

¶ 24 Respondent contends the circuit court's unfitness finding was against the manifest weight of the evidence. The State disagrees.

¶ 25 One of the bases for the circuit court finding respondent unfit was under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014)), which provides a parent may be declared unfit if he or she fails "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 Section 2-3 of Juvenile Court Act." Illinois courts have defined reasonable progress as "demonstrable movement toward the goal of reunification." (Internal quotation marks omitted.) *In re Reiny S.*, 374 Ill. App. 3d 1036, 1046, 871 N.E.2d 835, 844 (2007) (quoting *In re C.N.*, 196 Ill. 2d 181, 211, 752 N.E.2d 1030, 1047 (2001)). Moreover, they have explained reasonable progress as follows:

> " '[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 became known and which would prevent the court from returning custody of the child to the parent.' " *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (quoting *C.N.*, 196 Ill. 2d at 216-17, 752 N.E.2d at 1050).

Additionally, this court has explained reasonable progress exists when a circuit court "can

conclude that *** the court, in the *near future*, will be able to order the child returned to parental custody. The court will be able to order the child returned to parental custody in the near future because, at that point, the parent *will have fully complied* with the directives previously given to the parent in order to regain custody of the child." (Emphases in original.) *In re L.L.S.*, 218 Ill. App. 3d 444, 461, 577 N.E.2d 1375, 1387 (1991).

¶ 26 In determining a parent's fitness based on reasonable progress, a court may only consider evidence from the relevant time period. *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844 (citing *In re D.F.*, 208 Ill. 2d 223, 237-38, 802 N.E.2d 800, 809 (2003)). Courts are limited to that period "because reliance upon evidence of any subsequent time period could improperly allow a parent to circumvent her own unfitness because of a bureaucratic delay in bringing her case to trial." *Reiny S.*, 374 Ill. App. 3d at 1046, 871 N.E.2d at 844. In this case, the relevant nine-month period was February 5, 2014, to November 5, 2014.

¶ 27 Here, the State established by clear and convincing evidence respondent was never close to having fully complied with directives and having A.P. returned to her care during the relevant nine-month period. Respondent had started drinking alcohol again and appeared to be under the influence at a March 2014 court date. She had to again undergo a substance-abuse assessment and attend the recommended treatment, which she was doing at the close of the relevant period. Moreover, even after completing a parenting class before the neglect adjudication, respondent had difficulty demonstrating appropriate parenting skills during the relevant time period. She also had instability in her housing. While her housing initially appeared to be appropriate with her aunt, they were evicted and facts became apparent that the aunt would not be an appropriate person to assist respondent in caring for A.P. After the eviction, respondent did not provide her caseworker with the addresses of where she was living

from June 2014 until October 2014. Then, the home respondent obtained in October 2014 was not even sufficient to meet respondent's needs. Respondent also had budgeting issues that she refused to address with her caseworker. Last, respondent was not independent and could not meet her own basic needs.

¶ 28 Respondent points out she completed several tasks during the relevant time period. While respondent's consistent visitation with A.P. and attendance at a second parenting class are laudable, those facts do not show she made reasonable progress toward A.P.'s return because respondent was unable to properly parent A.P. during the visits. Likewise with the substance-abuse treatment, it was a positive that she went back for treatment when she started drinking again, but the need for more treatment moved her farther away from having A.P. returned to her. Thus, we disagree with respondent's suggestion her completion of some tasks results in the State not meeting its burden of proof.

¶ 29 Accordingly, the circuit court's finding respondent unfit based on her failure to make reasonable progress toward A.P.'s return during the first nine months after the neglect adjudication was not against the manifest weight of the evidence. Because we have upheld the circuit court's determination respondent met one of the statutory definitions of an "unfit person" (750 ILCS 50/1(D)(m)(ii) (West 2014)), we need not review any other bases for the court's unfitness finding. S*ee In re Tiffany M.*, 353 Ill. App. 3d 883, 891, 819 N.E.2d 813, 820 (2004).

¶ 30 B. A.P.'s Best Interest

¶ 31 Respondent also challenges the circuit court's best-interest finding. The State contends the court's finding was proper.

¶ 32 During the best-interest hearing, the circuit court focuses on "the child's welfare and whether termination would improve the child's future financial, social and emotional

atmosphere." *In re D.M.*, 336 Ill. App. 3d 766, 772, 784 N.E.2d 304, 309 (2002). In doing so, the court considers the factors set forth in section 1-3(4.05) of the Juvenile Court Act (705 ILCS 405/1-3(4.05) (West 2014)) in the context of the child's age and developmental needs. See *In re T.A.*, 359 Ill. App. 3d 953, 959-60, 835 N.E.2d 908, 912-13 (2005). Those factors include the following: the child's physical safety and welfare; the development of the child's identity; the child's family, cultural, and religious background and ties; the child's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the child; the child's own wishes and long-term goals; the child's community ties, including church, school, and friends; 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; the uniqueness of every family and child; the risks attendant to entering and being in substitute care; and the wishes of the persons available to care for the child. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 33 We note a parent's unfitness to have custody of a child does not automatically result in the termination of the parent's legal relationship with the child. *In re M.F.*, 326 Ill. App. 3d 1110, 1115, 762 N.E.2d 701, 706 (2002). As stated, the State must prove by a preponderance of the evidence the termination of parental rights is in the minor child's best interest. See *D.T.*, 212 Ill. 2d at 366, 818 N.E.2d at 1228. "Proof by a preponderance of the evidence means that the fact at issue *** is rendered more likely than not." *People v. Houar*, 365 Ill. App. 3d 682, 686, 850 N.E.2d 327, 331 (2006).

¶ 34 Here, the State's evidence showed A.P. was five years old and had been in foster care for 2 1/2 years. Since 2013, she had been living with her current foster mother, and the evidence was undisputed that A.P.'s foster mother wanted to adopt her. A.P. was doing well in

her foster mother's home and had bonded with her. She referred to her foster mother as "mom" and desired to live with her. She also had made friends through her current placement. All of A.P.'s ties were to her foster mother's home and community.

¶ 35 As for respondent's ability to parent with an assistant, the State had worked with respondent to find an appropriate person to assist her with parenting but had been unable to find a suitable person at the time of the best-interest hearing. The fact respondent had come up with another possible person should not deprive A.P. of the permanency she needs.

¶ 36 Accordingly, we find the circuit court's conclusion it was in A.P.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 37 III. CONCLUSION

¶ 38 For the reasons stated, we affirm the Sangamon County circuit court's judgment.

¶ 39 Affirmed.