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2016 IL App (4th) 160331-U

NO. 4-16-0331

FILED
September 1, 2016
Carla Bender
4th District Appellate
Court, IL

IN THE APPELLATE COURT

OF ILLINOIS

FOURTH DISTRICT

In re: Dm. V., Da. S., Ju. S., and Ja. S., Minors,	)	Appeal from
THE PEOPLE OF THE STATE OF ILLINOIS,	)	Circuit Court of
Petitioner-Appellee,	)	Champaign County
v.	)	No. 13J7
CYNTHIA VASSER,	)	
Respondent-Appellant.	)	Honorable
	)	John R. Kennedy,
	)	Judge Presiding.

JUSTICE TURNER delivered the judgment of the court.
Presiding Justice Knecht and Justice Appleton 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 two of the minor children's best interest to have respondent's parental rights terminated were not against the manifest weight of the evidence.

¶ 2 In October 2015, the State filed a motion for the termination of the parental rights of respondent, Cynthia Vasser, as to her minor children, Dm. V. (born in 2005), Da. S. (born in 2008), Ju. S. (born in 2010), and Ja. S. (born in 2011). After a three-day hearing, the Champaign County circuit court found respondent unfit. In April 2016, the court concluded it was in Ju. S.'s and Ja. S.'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 Ju. S.'s and Ja. S.'s best interest to terminate her parental rights. We affirm.

¶ 4 I. BACKGROUND

¶ 5 In October 2013, the State filed a petition for the adjudication of wardship of the minor children, which alleged they were dependent pursuant to section 2-4(1)(c) of the Juvenile Court Act of 1987 (Juvenile Court Act) (705 ILCS 405/2-4(1)(c) (West 2012)), in that they were without a parent or guardian able or willing to care for them. At the December 17, 2013, adjudicatory hearing, respondent admitted the minor children were dependent as alleged in the wardship petition. The circuit court accepted the admission and adjudicated the minor children dependent. After a January 2014 dispositional hearing, the court (1) found respondent unable to care for, protect, train, educate, supervise, or discipline the minor children; (2) made the minor children wards of the court; and (3) placed their custody and guardianship with the Department of Children and Family Services (DCFS). The fathers of the minor children were also found unable to care for the minor children. We note the fathers are not parties to this appeal.

¶ 6 On October 8, 2015, the State filed a motion to terminate respondent's parental rights to the minor children. The motion asserted respondent was unfit because she failed to (1) make reasonable efforts to correct the conditions that were the basis for the minor children's removal (750 ILCS 50/1(D)(m)(i) (West 2014) (as amended by Pub. Act 99-49, § 10 (eff. July 15, 2015)); (2) make reasonable progress toward the minor children's return during the initial nine-month period after the dependent adjudication (750 ILCS 50/1(D)(m)(ii) (West 2014) (as amended by Pub. Act 99-49, § 10 (eff. July 15, 2015)); (3) make reasonable progress toward the minor children's return during any nine-month period after the end of the initial nine-month period following the dependent adjudication, namely September 17, 2014 to June 17, 2015 (750 ILCS 50/1(D)(m)(ii) (West 2014) (as amended by Pub. Act 99-49, § 10 (eff. July 15, 2015)); and (4) maintain a reasonable degree of interest, concern, or responsibility as to the minor children's welfare (750 ILCS 50/1(D)(b) (West 2014) (as amended by Pub. Act 99-49, § 10 (eff. July 15,

2015)).

¶ 7 On January 14, 2016, the circuit court commenced a fitness hearing. The State presented the testimony of (1) Dr. William Kohen, a clinical psychologist who conducted a July 2015 mental-health evaluation of respondent; (2) Diane Nesbitt, an employee of the Champaign County Regional Planning Commission; (3) Parisha Carter, the caseworker; and (4) Grace Mitchell, the director of the Family Advocacy Center. The State also presented the laboratory results for respondent's positive drug tests. Respondent testified on her own behalf. The evidence relevant to the issues on appeal is set forth below.

¶ 8 Dr. Kohen testified respondent told him she had been clean for a period of time but admitted using cannabis three months before the July 2015 evaluation. Respondent stated she was smoking cannabis due to stress and to calm herself down. Respondent reported smoking two to three "joints" twice a week by herself. Dr. Kohen thought respondent was self-medicating by using cannabis. While respondent's cannabis use was not excessive or heavy, it was an issue because she was not to be using it all.

¶ 9 Nesbitt received a referral for respondent in October 2014 and began working with respondent right away. During their once a week meetings, Nesbitt was to help respondent with her goals of obtaining an associate's degree in graphics, finding and maintaining affordable housing for her and her family, and finding a full or part-time employment with benefits. During the time Nesbitt worked with respondent, respondent was able to obtain housing. Nesbitt testified she provided respondent with information but respondent got the housing on her own. As to employment, Nesbitt testified respondent would put in applications at different places and went to temporary employment agencies, but she never got hired. Respondent decided to put her education "on the back burner" to deal with her DCFS case. Nesbitt closed respondent's case on

May 6, 2015, because respondent missed three appointments. Respondent missed one appointment in November 2014, and Nesbitt had no contact with respondent from April 21 through May 6, 2015.

¶ 10 Carter testified she had been the caseworker in this case since it was transferred to Champaign County in October 2013. At that time, respondent was living in a dormitory at Parkland College and receiving Supplemental Security Income. Respondent told Carter she had completed her services in another county, so Carter believed all respondent needed to do was obtain adequate housing for the minor children to be returned. However, Carter discovered respondent still needed to complete services. The services established for respondent were domestic-violence counseling, parenting classes, individual counseling, and a mental-health evaluation. As to the mental-health evaluation, respondent was on a wait list at Community Elements and was still on it in September 2014. Carter did not know whether respondent was ever contacted by Community Elements. Respondent completed the domestic-violence counseling, parenting classes, and individual counseling in June 2014. Carter testified respondent had no outstanding referrals in late June 2014. However, from summer 2014 to February 2015, respondent had an issue with her residence. Respondent had obtained adequate housing in November 2013 but lost that home in July 2014 because she could not pay the rent. Respondent did not acquire another home until February 2015, when she began renting the three-bedroom apartment where she still lived. The residence was appropriate for the minor children.

¶ 11 In October 2013, respondent had visitation with the minor children, which was supervised by Lutheran Social Services. From December 2014 to February 2015, respondent's visits were suspended due to the minor children's behavior at their respective foster homes after the visits. In March 2015, respondent had four-hour unsupervised visits with the minor children.

Beginning in May 2015, respondent's visitation required supervision by a third party because respondent had a positive drug test. Since October 2013, Carter supervised 12 to 15 of respondent's visits with the minor children. Her visits were appropriate, and the minor children were always happy to see her. At first, inadequate supervision was an issue for respondent during visits. However, after some coaching, respondent was able to get all four children together and spend equal time with them. Respondent never got to the point of having overnight visits.

¶ 12 Carter began having respondent do drug drops after Carter received a hotline call about respondent doing illegal drugs in someone's home. The first two drops were negative, but the third was positive for two different substances. (The drug tests results contained in the State's exhibit No. 1 show respondent tested positive for cannabis and a cocaine metabolite.) When Carter questioned respondent about the positive results, she denied using both substances. Respondent eventually admitted using cannabis. She explained she was upset and depressed and used the cannabis to calm herself down. Respondent told Carter she did not use cannabis often. A week after the positive drug test, Carter made a referral for respondent to obtain a substance-abuse assessment. Respondent completed the first part of the assessment but not the second part. Carter made two more referrals for a substance-abuse assessment that respondent did not complete. In November 2015, respondent did complete a substance-abuse assessment.

¶ 13 Mitchell testified she supervised respondent's visits with the minor children from June 12, 2015, to August 14, 2015. Mitchell's supervision of the visits ended due to school resuming. The visits took place on Fridays from 11 a.m. to 2 p.m. Initially, it was difficult for respondent to interact with all four children at one time. Her focus was on Dm. V., and Mitchell and the staff had to assist in keeping the other children active. Mitchell discussed with

respondent her need to interact with all four children, and respondent made improvements in that area by bringing games and crafts, in which all four children could participate.

¶ 14 Respondent testified she was 30 years old and from Cairo, Illinois. She moved to Champaign four years ago to be closer to her minor children. She went to Parkland College to get an education and stabilize herself. Respondent lived in a dormitory at Parkland College. According to respondent, when she first met with Carter, Carter told respondent she could take the minor children home that day if she had adequate housing. Respondent began to work on getting out of the dormitory and obtaining a home for her and the minor children. Respondent was able to rent a three-bedroom home. Respondent then learned she needed to complete services to regain custody of the minor children. When she completed her services, respondent was still living in the three-bedroom home. Respondent moved out of the home in July 2014 because she could not afford the rent. She moved in with a friend. In February 2015, respondent rented a three-bedroom apartment. Her unsupervised visits with the minor children were at the apartment. During those visits, she would take the minor children to the park or the library. They would also watch movies, bake, color, paint, or play games. Respondent also worked on the girls' hair.

¶ 15 In spring 2015, respondent was frustrated because she believed she had done everything she had been asked to do and still did not have custody of the minor children. Respondent testified it seemed like every time she talked to the caseworker something bad had happened to one of the minor children in their foster home. As a result of her frustrations, she resorted to using street drugs. Respondent regretted that decision. In the summer and fall of 2015, she started addressing the issues she had in the spring.

¶ 16 At the conclusion of the hearing, the circuit court found respondent was unfit

based on her failure to make reasonable progress toward the minor children's return during the nine-month period of September 17, 2014, to June 17, 2015.

¶ 17 On March 31, 2016, the circuit court held the best-interest hearing. The State presented the best-interest report and respondent testified on her own behalf. The report stated respondent still had her three-bedroom apartment and was working at FedEx Ground. Respondent had completed all of her services, except for the substance-abuse assessment. As of October 2015, respondent only had monthly visits with the minor children. Respondent interacted with her children during visits and provided snacks. Concerns existed about respondent's "management of discipline when the children's behaviors began to increase during visits." The minor children interacted well with respondent during visits but have had behavioral problems in their foster homes after visits.

¶ 18 The report also noted Ju. S. had been in the same foster home since October 15, 2013, and was observed to get along well with her foster parent. Her foster parent was able to manage Ju. S.'s behaviors when they arose. Ju. S. was in kindergarten and was to begin speech therapy. Additionally, Ju. S. had been in counseling since October 2013, and her counselor reported the foster parent appeared to be attentive and open to parenting strategies that were the best for Ju. S.'s emotional needs.

¶ 19 As to Ja. S., the report stated he was placed in the same foster home as Ju. S. on June 9, 2015, and was doing well in that home. Ja. S. was also doing well in pre-kindergarten. The caseworker referred Ja. S. to individual/play therapy, and it was noted Ja. S. did not want to be in the therapy sessions without his foster parent. The foster parent was willing to provide permanency for both Ja. S. and Ju. S.

¶ 20 Last, the report indicated Dm. V. and Da. S. were in different placements from

each other and the other two. Moreover, Dm. V. and Da. S. were not in placements willing to provide permanency. They also had significant behavioral issues.

¶ 21 Respondent testified about how she was first told she could take the minor children home if she obtained adequate housing. Respondent rented a three-bedroom home, and DCFS said the home was suitable for the minor children. However, DCFS did not return the children. She did have visits with the minor children at the home, and they went great. Dm. V. would ask when she was going to live in the home, and respondent could not give her a straight answer because she was not allowed to talk about it with the minor children. At that time, respondent was still in school and looking for employment. Respondent eventually lost the three-bedroom home.

¶ 22 Respondent later obtained a three-bedroom apartment, which was also approved by DCFS. She had visits with the children at the new apartment, and they went great. She was excited about the prospect of the minor children returning home but also scared about messing things up. Respondent stated the minor children continuously asked when they were coming home and got frustrated when she could not answer. Respondent had concerns about the minor children's care in their foster homes because Ja. S. had stitches in his mouth from being bitten on the face by a dog, Dm. V. kept running away and threatening suicide, and it was reported to her Ju. S. almost drowned or got hit by a car. Additionally, respondent acknowledged she made poor choices in spring 2015.

¶ 23 Respondent further testified she could provide adequate food and shelter for all four minor children and had adequate funds to do so through her job at FedEx Ground. Her apartment had everything the minor children needed, as well as toys. Respondent could keep them healthy and take them to any medical appointments. Respondent had no doubt in her mind

she could care for all four children. She loved them all the same and described Dm. V. as her "quiet one," Ju. S. as her "goof ball," Da. S. as her "buddy," and Ja. S. as the "laid back one."

¶ 24 After hearing the parties' evidence and arguments, the circuit court found it was in the minor children's best interest to terminate the parental rights of their fathers. The court took the matter of respondent's parental rights under advisement. On April 15, 2015, the court held a hearing explaining its findings as to respondent. The court found it was in Ju. S.'s and Ja. S.'s best interest to terminate respondent's parental rights. However, the court found it was not in the best interest of Dm. V. and Da. S. to terminate respondent's parental rights and denied the State's termination motion as to them. On April 18, 2016, the court entered a written termination order, terminating respondent's parental rights as to Ju. S. and Ja. S. On April 29, 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. Mar. 8, 2016).

¶ 25 II. ANALYSIS

¶ 26 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) (as amended by Pub. Act 99-49, § 10 (eff. July 15, 2015)). *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 children's best interest that parental rights be

terminated. *In re D.T.*, 212 Ill. 2d 347, 366, 818 N.E.2d 1214, 1228 (2004).

¶ 27 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 minors, 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.

¶ 28 A. Respondent's Fitness

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

¶ 30 The circuit court found respondent unfit under section 1(D)(m)(ii) of the Adoption Act (750 ILCS 50/1(D)(m)(ii) (West 2014) (as amended by Pub. Act 99-49, § 10 (eff. July 15, 2015)), 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 the 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).

¶ 31 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 September 17, 2014, to June 17, 2015.

¶ 32 While respondent achieved her housing goal during the relevant period, the rest of the evidence showed respondent regressed in getting closer to regaining custody of the minor children during the relevant time period. Respondent had received unsupervised visits with the minor children in March 2015 but was required to return to supervised visits in May 2015 due to a positive drug test. The drug test was positive for both cannabis and a cocaine metabolite. Respondent admitted using cannabis to calm herself. Carter referred respondent for a substance-abuse evaluation a week after the positive drop, but respondent did not complete the evaluation during the 60-day referral period. Also, in May 2015, respondent was dropped from Nesbitt's program due to three missed appointments from Nesbitt's program, the goals of which were to assist respondent with finding housing and employment and obtaining an associate's degree. The State's evidence clearly and convincingly showed that, at the end of the relevant period, the court was not close to being able to return the minor children to respondent's custody. Accordingly, we do not find the circuit court's unfitness finding was against the manifest weight of the evidence.

¶ 33 B. Ju. S.'s and Ja. S.'s Best Interest

¶ 34 Respondent also challenges the circuit court's best-interest finding as to Ju. S. and Ja. S. The State contends the court's finding was proper.

¶ 35 During the best-interest hearing, the circuit court focuses on "the child[ren]'s welfare and whether termination would improve the child[ren]'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 children'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 children's physical safety and welfare; the development of the children's identity; the children's family, cultural, and religious background and ties; the children's sense of attachments, including feelings of love, being valued, and security, and taking into account the least-disruptive placement for the children; the children's own wishes and long-term goals; the children's community ties, including church, school, and friends; the children's need for permanence, which includes the children'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 children. 705 ILCS 405/1-3(4.05) (West 2014).

¶ 36 We note a parent's unfitness to have custody of his or her children does not automatically result in the termination of the parent's legal relationship with the children. *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 children'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).

¶ 37 At the time of the March 2016 best-interest hearing, Ju. S. was five years old, and Ja. S. was four years old. They had been in foster care for more than three years, which is a majority of their young lives. Ju. S. had been living in her current foster home since October 2013, and Ja. S. joined her in that home in June 2015. Ju. S. had issues, which were being addressed and managed by the foster parent. The children's behavior had improved in the current foster home. The foster parent was willing to provide permanency for both children. Moreover, it was not clear when respondent would address the substance-abuse issue, which was impeding

the minor children's return home to her. We note Ju. S. and Ja. S. were in a different position than Dm. V. and Da. S., who were older, had greater needs, and were not in a placement that could provide permanency. While maintaining a family unit is a factor against termination, it does not override the other factors favoring termination. On the evidence presented in this case, the best-interest factors overwhelmingly favor the termination of respondent's parental rights as to Ju. S. and Ja. S.

¶ 38 Accordingly, we find the circuit court's conclusion it was in Ju. S.'s and Ja. S.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 39 III. CONCLUSION

¶ 40 For the reasons stated, we affirm the Champaign County circuit court's judgment.

¶ 41 Affirmed.