2017 IL App (3d) 160672-U

Order filed March 22, 2017

IN THE

APPELLATE COURT OF ILLINOIS

THIRD DISTRICT

2017

In re N.O.,	)	Appeal from the Circuit Court
	)	of the 9th Judicial Circuit,
a Minor	)	McDonough County, Illinois.
	)	
(The People of the State of Illinois,	)	
	)	
Petitioner-Appellee,	)	Appeal No. 3-16-0672
	)	Circuit No. 15-JA-5
v.	)	
	)	
Taylor C.,	)	Honorable
	)	Heidi A. Benson,
Respondent-Appellant.)	)	Judge, Presiding.

JUSTICE LYTTON delivered the judgment of the court.
Justices O'Brien and Wright concurred in the judgment.

ORDER

¶ 1 *Held*: Trial court's fitness and best interest findings were not against the manifest weight of the evidence.

¶ 2 Respondent, Taylor C., appeals from the trial court's order granting the State's petition to terminate her parental rights to her daughter, N.O. The trial court found respondent unfit for failing to make reasonable efforts and progress during the relevant nine-month period and determined it was in the child's best interest to terminate her parental rights. Respondent

appeals, asserting the trial court's fitness and best-interest findings were against the manifest weight of the evidence. We affirm.

¶ 3 FACTS

¶ 4 On March 30, 2015, the State filed a petition for adjudication of wardship of N.O. (born February 25, 2014), alleging that she was neglected pursuant to section 2-3(1)(b) of the Juvenile Court Act of 1987 (Act) (705 ILCS 405/2-3(1)(b) (West 2014), in that her environment was injurious to her welfare due to respondent. The petition alleged that on March 27, 2015, officers executed a search warrant at N.O.'s father's house, during which N.O. was present, and arrested respondent and the father for manufacturing and delivering cannabis and possessing cannabis. The petition also alleged that respondent's presence in the father's house was a violation of an order of protection. On June 8, 2015, respondent admitted the allegations in the petition, and the court adjudicated N.O. as abused and neglected due to her presence in the home during the execution of the search warrant and respondent's subsequent arrest for felony drug charges.

¶ 5 In the dispositional order entered on June 25, 2015, the trial court determined that it was in the best interest of N.O. to make her a ward of the court, found respondent unfit and set a permanency goal of return home within 12 months. Respondent was instructed to comply with the service plan, which ordered her to (1) participate in individual counseling and follow all recommendations from the treatment, (2) participate in parenting classes, (3) participate in domestic violence treatment through individual therapy, (4) submit to random urine screens, (5) complete substance abuse evaluation and follow all recommendations, and (6) maintain contact with social services.

¶ 6 On June 21, 2016, the State filed a petition to terminate respondent's parental rights, alleging that respondent (1) failed to maintain a reasonable degree of interest, concern or responsibility as to N.O.'s welfare (750 ILCS 50/1(D)(b) (West 2016)), (2) failed to make

reasonable efforts to correct the conditions that were the basis for the removal of N.O. during the nine-month period of June 9, 2015, to March 9, 2016 (750 ILCS 50/1(D)(m)(i) (West 2016)), and (3) failed to make reasonable progress toward the return of N.O. during the nine-month period of June 9, 2015, to March 9, 2016 (750 ILCS 50/1(D)(m)(ii) (West 2016)).

¶ 7 At the adjudicatory hearing held on September 1, 2016, Walter Gordon testified that he was the Lutheran Social Services (LSS) counselor assigned to the case from March 2015 until April 2016. He completed an integrated assessment with respondent to determine the appropriate services for her plan. Recommended services for respondent included mental health assessments, substance abuse services, urine screens, domestic violence counseling, individual counseling, parenting classes and visitation with N.O.

¶ 8 Gordon testified regarding the September 2015 and March 2016 service plans and respondent's compliance with them. Respondent received an unsatisfactory rating for mental health assessments, substance abuse services and domestic violence services because she never engaged in those services during the relevant nine-month period. In the March 2016 service plan, Gordon rated respondent satisfactory for the task of urine screens based on her completion of one drug screen for her probation officer in October 2015, which was negative. However, Gordon noted that he had trouble reaching respondent to schedule other drug screenings and she never completed a drug drop for LSS. Gordon further testified that respondent was rated unsatisfactory for attending parenting classes and maintaining contact with her social worker because she did not start classes until October 2015 and only attended a few meetings. Gordon also had difficulty contacting respondent. Gordon admitted that respondent did not jeopardize N.O.'s health, safety or welfare during the relevant nine-month period. He was primarily concerned with respondent's erratic participation in services.

¶ 9 On cross-examination, Gordon testified that respondent had been instructed to complete drug screening once every month. Gordon was notified by the probation officer that respondent had a positive drug test on February 2, 2016. He also acknowledged that respondent had reported three different addresses as her place of primary residence between June 2015 and June 2016.

¶ 10 Diane Bledsoe testified that she was the child welfare specialist assigned to respondent's and N.O.'s case in April of 2016. At that time, N.O. was two-and-a-half years old. The first time Bledsoe met respondent was in May of 2016 when respondent was in jail. She met with respondent again in June after she had been released from jail and was residing with her sister. At that meeting, Bledsoe discussed with respondent the need to participate in and complete services. Bledsoe scheduled several subsequent meetings, but respondent failed to appear. She also testified that she set up a drug drop for respondent the week before the fitness hearing. Respondent showed up for the drop but said she could not go to the bathroom and refused to complete the screening. Respondent was rated unsatisfactory for domestic violence services, mental health assessment, urine screening, and updating contact information because she never completed the assessments and failed to attend meetings. Respondent informed Bledsoe that she missed some of the meetings because she overslept or forgot about them. As for parenting classes, respondent was rated satisfactory. She had completed those classes just before the hearing. Bledsoe testified that in her opinion, respondent had not made reasonable efforts or reasonable progress toward the return of N.O.

¶ 11 Bledsoe admitted that respondent had an apartment of her own, although she had only moved into the apartment a short while ago. She also noted that respondent had a job. However, she testified that she had difficultly establishing the stability of that job. She had no idea how long respondent had been employed there or how many hours a week she worked.

¶ 12 The trial court took judicial notice of a criminal case in which respondent pled guilty to unlawful delivery and possession of cannabis dated September 1, 2015. The court also noted that the petition to revoke respondent's probation for failure to obtain a substance abuse evaluation and a positive drug drop had been filed on March 30, 2016, and that respondent admitted that she committed the violations listed in the petition. The court also took judicial notice of three other cases in which respondent pled guilty to various offenses, including the possession/consumption of alcohol under the age of 21.

¶ 13 Carla Bahr then testified that she was contacted by LSS to conduct parenting therapy with respondent. Bahr met with respondent five times from October 1, 2015, through June of 2016. Respondent brought N.O. to one session and Bahr observed their interaction. She noted that respondent and N.O. had "great affection" for one another. Respondent kept her appointments with Bahr most of the time. Bahr testified that respondent missed a few sessions due to anxiety. She explained that respondent had difficulty coming to her office because respondent had attended counseling at the same office when she was younger.

¶ 14 Since June of 2016, Bahr counseled respondent 11 to 13 times. Respondent had made progress and was better at taking responsibility for her actions and attempting to correct her behavior. She was diligently trying to make a living and to keep her own apartment. Bahr testified that she believed respondent could be a good parent if she continued on the path she had been on since June. Bahr agreed that if respondent had been attending regularly from the time N.O. came into care, she may have made progress earlier. She agreed that respondent's avoidance impaired her ability to have N.O. returned to her care. On cross-examination, Bahr noted that respondent had not completed parenting classes by March 9, 2016.

¶ 15 Respondent testified that she was 22 years old at the time of the hearing. She agreed that she had not completed most of the provided services during the relevant nine-month period. She

stated that she failed to attend appointments at various times because she was "either working or depressed or just at home." Currently, respondent worked at a restaurant as a hostess and bused tables. Prior to that, she worked at Domino's for five years. Respondent testified that she had a two bedroom apartment where she lived by herself. She moved into the apartment on August 23, 2016.

¶ 16 Respondent admitted that she had only taken two drug tests and had failed one of them. She explained that she failed to make reasonable progress in achieving services between October 2015 and March 2016 because she "just shut down." She testified that due to a traumatic experience in the fall of 2015, she had difficulty coping with events in her life and her anxiety caused her to avoid counseling. She admitted that she had a good relationship with Bahr and stated that she did not have a good relationship with Gordon because he did not make an effort to call her.

¶ 17 Respondent acknowledged that N.O. was removed from her care based on a search warrant that was executed at the home of N.O.'s father and that she and N.O. were present during the search. She claimed that, at the time, she did not know N.O.'s father was selling drugs. Respondent admitted that her service plan instructed her to complete drug tests as a means of demonstrating that drugs were no longer a part of her life. She knew she was required to complete 12 drug drops through DCFS and admitted that she did not complete any. She testified that she completed two drops through her probation officer and that one was negative. Respondent stated that her anxiety was triggered by the removal of N.O. and that she was "fine" before N.O. was taken from her.

¶ 18 In closing arguments, respondent's counsel refuted the claim that respondent did not show adequate interest. He argued that respondent had improved significantly since June of 2016 and needed additional time to demonstrate reasonable efforts and progress.

¶ 19 The trial court praised respondent for her work in completing parenting classes and improving her life skills. However, the court stated that the primary reasons N.O. was removed were substance abuse, domestic violence and mental health issues and noted that those issues had not been addressed during the nine-month period. The court found respondent unfit, by clear and convincing evidence, based on her failure to make reasonable efforts to correct the conditions that were the basis for N.O.'s removal and reasonable progress toward the return of N.O. during the period of June 9, 2015, through March 9, 2016.

¶ 20 At the best interest hearing, Bledsoe testified that N.O. resided with her aunt, Erin H., and Erin was willing to adopt her. N.O. had been in Erin's care for 18 months. Erin was able to provide for N.O.'s needs. She provided food, shelter and clothing, and she took care of N.O.'s medical, dental and education needs. Erin's home was safe and clean. Bledsoe stated that N.O. was "very happy" and that Erin's household was "very stable." N.O. had her own bedroom and her own toys. Erin's two older children had bonded with N.O. Bledsoe testified that N.O. felt secure and was loved in Erin's home. She believed N.O. needed permanency with Erin. She also believed that N.O. had developed strong ties to the community. She went to a local daycare and had friends in the neighborhood with whom Erin set up play dates. Bledsoe also testified that Erin intended to maintain a visitation arrangement between N.O. and respondent if respondent's rights were terminated. Bledsoe opined that it was in the best interest of N.O. to terminate the parental rights of respondent.

¶ 21 Respondent testified that she attended most of her arranged visits with N.O. She works Monday through Friday, and the visits are on Saturdays and Sundays. She stated that the visits were amazing and that she enjoyed taking N.O. to the park and the pool. Respondent stated that N.O. loves her and knows she is her mother.

¶ 22 Respondent further testified that she is receiving mental health counseling at Carthage. She said she was willing to continue counseling even if her parental rights were terminated. Respondent agreed that N.O. was well-cared for and well-adjusted in her current placement with Erin.

¶ 23 At the conclusion of the hearing, respondent's counsel argued against termination because respondent had attended regular visits with N.O. and was willing to continue counseling. In opposition, the guardian *ad litem* (GAL) believed that it was in the best interest of N.O. to have a permanent home with the foster parent and asked the court to terminate respondent's parental rights.

¶ 24 The trial court agreed with the GAL and found that it was in the child's best interest to terminate respondent's parental rights. The court stated that, although respondent loved the minor, she was "not very close to getting her life pulled together in a way that would allow her to raise this child." It then noted that N.O. was being raised by her aunt, who allowed respondent and respondent's mother access to the child and who indicated that respondent would continue to have access to the child. Based on the need for certainty and stability, the trial court found that it was in the minor's best interest to terminate respondent's parental rights.

¶ 25 ANALYSIS

¶ 26 I. Fitness Finding

¶ 27 The State has the burden of proving parental unfitness by clear and convincing evidence. *In re Jordan V.*, 347 Ill. App. 3d 1057, 1067 (2004). A reviewing court will not overturn the trial court's finding of unfitness unless it is against the manifest weight of the evidence. *Id.* The trial court's decision is afforded great deference because it has the best opportunity to observe the witnesses and evaluate their credibility. *Id.*

¶ 28 Under section 1(D) of the Adoption Act (750 ILCS 50/0.01 *et seq*. (West 2016)), a parent may be found unfit due to a failure to (1) maintain a reasonable degree of interest, concern or responsibility as to the child's welfare, (2) make reasonable efforts to correct the conditions that were the basis for the removal of the child during minor during any nine-month following the adjudication of neglect, or (3) make reasonable progress toward the return of the child during any nine-month period following the neglect adjudication. 750 ILCS 50/1(D)(b), (m)(i), (m)(ii) (West 2016). Each ground requires a separate analysis. *In re J.A.*, 316 Ill. App. 3d 553, 564 (2000). However, "[o]nly one ground of unfitness needs to be proved by clear and convincing evidence in order to find a parent unfit." *In re R.L.*, 352 Ill. App. 3d 985, 998 (2004).

¶ 29 "Reasonable efforts" is a subjective standard, and the focus is on whether a particular parent's efforts to correct the conditions that caused removal were reasonable. *Id*. In contrast, "reasonable progress" is an objective standard that considers the progress made toward the goal of returning the child to the parent. *In re M.A.*, 325 Ill. App. 3d 387, 391 (2001). A failure to make either reasonable efforts or reasonable progress can be sufficient for an adjudication of unfitness. *R.L.*, 352 Ill. App. 3d at 999.

¶ 30 In this case, the trial court specifically found respondent unfit for (1) failing to make reasonable efforts to correct the conditions that were the basis for removing N.O. between June 9, 2015, and March 9, 2016, and (2) failing to make reasonable progress toward the return of N.O. between June of 2015 and March of 2016. We find the first ground dispositive.

¶ 31 In concluding that respondent had not made reasonable efforts to correct the conditions that led to N.O.'s removal, the court acknowledged that respondent had completed the parenting program. However, the court found respondent failed to make reasonable efforts to correct the conditions that were the basis of N.O's removal from her care in that she failed to complete a

mental health assessment, substance abuse services, urine screenings, domestic violence services, individual counseling and failed to provide current contact information.

¶ 32 The record showed that respondent never completed a mental health assessment and failed to engage in substance abuse services, domestic violence services and individual counseling during the relevant nine-month period. Although respondent attended parenting classes, the evidence also shows that she failed to complete those classes during the nine-month period ending in March of 2016. She failed to continuously and actively engage in parenting classes until June of 2016, three months after the relevant period ended. Further, the services with Bahr only addressed respondent's issues as to parenting. Those counseling sessions did not address the domestic violence, substance abuse or mental health issues that were also identified in respondent's integrated assessment and included in the service plan.

¶ 33 In addition to failing to complete services, respondent failed to avoid the substance abuse issues that contributed to the initial removal of N.O. during the nine-month period between October 2015 and June 2016. The record shows that she had a positive drug test in February of 2016 that resulted in the revocation of her probation and several weeks in jail. During her testimony, respondent admitted that she had a positive drug drop in February of 2016.

¶ 34 In this case, respondent put forth some effort in completing the parenting program. However, given the evidence of failing to engage in necessary services and her continued substance abuse, we cannot conclude that the court erred in determining respondent did not put forth reasonable efforts to correct the conditions that were the basis for N.O.'s removal during the period between October 9, 2015, and March 9, 2016. Accordingly, the court's finding of unfitness was not against the manifest weight of the evidence.

¶ 35 II. Best Interest Finding

¶ 36 Once the trial court determines a parent to be unfit, the next stage is to determine whether it is in the best interest of the minor to terminate parental rights. *In re Jaron Z.*, 348 Ill. App. 3d 239, 261 (2004). The State must prove by a preponderance of the evidence that termination is in the best interest of the minor. *Id.* The court's finding will not be overturned unless it is against the manifest weight of the evidence. *Id.* at 261-62.

¶ 37 The focus of the best interest hearing is determining the best interest of the child, not the parent. 705 ILCS 405/1-3(4.05) (West 2016). The parent's interest in maintaining the parent/child relationship must yield to the child's interest in a stable, loving home life. *In re D.T.*, 212 Ill. 2d 347, 363 (2004). Courts should not allow a child to live indefinitely with the lack of permanence inherent in a foster home. *In re A.H.*, 215 Ill. App. 3d 522, 530 (1991).

¶ 38 The trial court must consider the following factors, in the context of the child's age and developmental needs, in determining whether to terminate parental rights:

> "(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 * * *[;]
>
> * * *
>
> (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 2016).

¶ 39 Here, the record demonstrates N.O. had been with her foster placement since March 2015, and she had developed a close bond with her foster family. N.O. was originally placed with her paternal aunt when she was a year old, and she had lived with her for the past 18 months of her life. Erin and N.O. had formed a strong bond, and N.O. had bonded with Erin's two children. Moreover, Erin was willing to provide N.O. permanency by adopting her if she was unable to return home to respondent.

¶ 40 The record further demonstrates that respondent cannot provide stability and permanence for N.O. in the near future. Although respondent was employed and working toward maintaining stable housing, respondent had only been living in an apartment by herself for a month. Moreover, she had not completed the additional domestic violence classes, substance abuse classes and mental health assessment recommended to her following her release from jail in the spring of 2016. Thus, the trial court's conclusion that it was in N.O.'s best interest to terminate respondent's parental rights was not against the manifest weight of the evidence.

¶ 41 CONCLUSION

¶ 42 The judgment of the circuit court of McDonough County is affirmed.

¶ 43 Affirmed.